**Preamble.**

Preamble. We, the people, grateful to Almighty God for our freedom, do ordain and establish the following declaration of rights and frame of government, as the Constitution of the State of Nebraska.

**Annotation**

The Preamble of the Constitution is not a part of the Constitution, but only a general statement of purpose. The State of Nebraska does not derive any of its substantive powers from the Preamble to the Nebraska Constitution. The Preamble cannot exert any power to secure the declared objects of the Constitution unless, apart from the Preamble, such power can be found in, or can be properly implied from, some express delegation in the Constitution. Omaha Nat. Bank v. Spire, 223 Neb. 209, 389 N.W.2d 269 (1986).

**I-1. Statement of rights.**

All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed.

**Source:**Neb. Const. art. I, sec. 1 (1875); Amended 1988, Initiative Measure No. 403.

**Annotation**

**1. Personal rights**
**2. Property rights**
**3. Taxation**
**4. Right to bear arms**
**5. Miscellaneous**

**1. Personal rights**

Section 29-2203 does not violate either the U.S. or Nebraska Constitution. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

Statute providing it shall be unlawful just to be in place where controlled substance is being used illegally is unconstitutionally vague and overbroad. State v. Adkins, 196 Neb. 76, 241 N.W.2d 655 (1976).

Requirement of continuous residency of four months independent of school attendance to establish residence for tuition purposes does not violate this section. Thompson v. Board of Regents of University of Nebraska, 187 Neb. 252, 188 N.W.2d 840 (1971).

Failure to appoint counsel to represent a defendant in a criminal case upon appeal did not violate this section. State v. Dabney, 181 Neb. 263, 147 N.W.2d 768 (1967).

Sexual psychopath law does not deny equal protection of the laws. State v. Madary, 178 Neb. 383, 133 N.W.2d 583 (1965).

Statute prohibiting state and federal officers and employees from being delegates to county, district, and state political conventions did not violate this section. State ex rel. Baldwin v. Strain, 152 Neb. 763, 42 N.W.2d 796 (1950).

Habitual criminal law, defining habitual criminal and providing punishment therefor, is not violative of this section. Rains v. State, 142 Neb. 284, 5 N.W.2d 887 (1942).

The provision of an agreement between a labor organization and an employer that when a female employee, member of the organization, marries, her employment shall terminate, does not violate constitutional rights of employee. Brisbin v. E. L. Oliver Lodge No. 335, 134 Neb. 517, 279 N.W. 277 (1938).

The right to engage in the sale of intoxicating liquors is not an inherent and inalienable right which the state is forbidden to abridge. Griffin v. Gass, 133 Neb. 56, 274 N.W. 193 (1937).

Statute forbidding possession of liquor elsewhere than in private dwelling is not void as discriminatory. Fitch v. State, 102 Neb. 361, 167 N.W. 417 (1918).

"Sunday Law" is not repugnant to the Constitution. In re Caldwell, 82 Neb. 544, 118 N.W. 133 (1908).

A statute regulating and limiting the hours of employment of females in manufacturing, mechanical and mercantile establishments, hotels and restaurants is not repugnant to the provisions of the Constitution. Wenham v. State, 65 Neb. 394, 91 N.W. 421 (1902), 58 L.R.A. 825 (1902).

**2. Property rights**

Statute requiring fencing of right-of-way by railroads did not operate to deprive railroad of equal rights. Linenbrink v. Chicago & N.W. Ry. Co., 177 Neb. 838, 131 N.W.2d 417 (1964).

Every citizen has the right to acquire property and sell it at such price as he can obtain in fair barter. Elder v. Doerr, 175 Neb. 483, 122 N.W.2d 528 (1963).

A private employment agency is not a business in which the public has such an interest that price fixing may properly be included as a method of regulation. Boomer v. Olsen, 143 Neb. 579, 10 N.W.2d 507 (1943).

Act regulating sale of motor vehicles for purpose of preventing fraud is not a violation of constitutional rights. Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388 (1939), 126 A.L.R. 729 (1939).

The right to acquire property and dispose of it in such innocent manner as he pleases for such price as he can obtain in fair barter is guaranteed to every person. State ex rel. English v. Ruback, 135 Neb. 335, 281 N.W. 607 (1938).

Property used for "religious purpose" is within the spirit of Constitution exempting it from taxation. Ancient & Accepted Scottish Rite v. Board of County Commissioners, 122 Neb. 586, 241 N.W. 93 (1932), 81 A.L.R. 1166 (1932).

City ordinance requiring Sunday closing of places of business for sale or exchange of motor vehicles is valid under police power, and not discriminatory under this article. Stewart Motor Co. v. City of Omaha, 120 Neb. 776, 235 N.W. 332 (1931).

Statute requiring railroad company to fence right-of-way is constitutional. Middaugh v. Chicago & N.W. Ry. Co., 114 Neb. 438, 208 N.W. 139 (1926).

Law prohibiting merchants from giving trading stamps is unconstitutional. State ex rel. Hartigan v. Sperry & Hutchinson Co., 94 Neb. 785, 144 N.W. 795 (1913), 49 L.R.A.N.S. 1123 (1913).

**3. Taxation**

Ordinance of city of Lincoln imposing occupation tax on taxicabs was not objectionable as unjust, discriminatory and denial of equal protection of the laws, though no tax was imposed on trucks carrying freight. Richter v. City of Lincoln, 136 Neb. 289, 285 N.W. 593 (1939).

Gross premium tax on foreign insurance companies is an excise tax on privilege of doing business in Nebraska, and does not violate equal rights clause of Constitution. State ex rel. Smrha v. General American Life Ins. Co., 132 Neb. 520, 272 N.W. 555 (1937).

**4. Right to bear arms**

The "Right to Bear Arms" amendment to this provision does not abolish the death penalty in Nebraska. Anderson v. Gunter, 235 Neb. 560, 456 N.W.2d 286 (1990).

Section 28-1203(1) is not vitiated by the "Right to Bear Arms" amendment of 1988, is a valid exercise of the State's police power in reasonable regulation of certain firearms, and does not contravene this provision. State v. LaChapelle, 234 Neb. 458, 451 N.W.2d 689 (1990).

The constitutional right to keep and bear arms is subject to reasonable regulation by statute if the statute does not frustrate the guarantee of the constitutional provision. State v. Comeau, 233 Neb. 907, 448 N.W.2d 595 (1989).

**5. Miscellaneous**

Section 39-6,193, imposing vicarious liability on owners-lessors of trucks for damages by lessees and operators of the leased trucks, is constitutional. Bridgeford v. U-Haul Co., 195 Neb. 308, 238 N.W.2d 443 (1976).

Act establishing vocational technical schools does not violate this section. Campbell v. Area Vocational Technical School No. 2, 183 Neb. 318, 159 N.W.2d 817 (1968).

Statute creating Nebraska Power Review Board did not violate this section. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

Zoning ordinance of city of Omaha did not violate this section. Wolf v. City of Omaha, 177 Neb. 545, 129 N.W.2d 501 (1964).

Sunday closing law violated this section and was unconstitutional in its entirety. Terry Carpenter, Inc. v. Wood, 177 Neb. 515, 129 N.W.2d 475 (1964).

Sunday closing ordinance of city of first class violated this section. Skag-Way Department

Stores, Inc. v. City of Grand Island, 176 Neb. 169, 125 N.W.2d 529 (1964).

Zoning act and ordinance sustained as constitutional. Schlientz v. City of North Platte, 172 Neb. 477, 110 N.W.2d 58 (1961).

In the interpretation of the Bill of Rights, the court will consider its history, the development of the evil sought to be restrained, the established laws, usages and customs at time of its adoption, and scope of the remedy its terms imply. First Trust Co. of Lincoln v. Smith, 134 Neb. 84, 277 N.W. 762 (1938).

Statute arbitrarily dividing county into commissioner districts, without regard to population, is unconstitutional. State ex re. Harte v. Moorhead, 99 Neb. 527, 156 N.W. 1067 (1916).

The constitutional right to life, liberty and the pursuit of happiness is not infringed by statutes prohibiting deceit or fraud. In re Barnes, 83 Neb. 443, 119 N.W. 662 (1909).

Bill of rights is not enumeration of all powers reserved to people. State ex rel. Smyth, Attorney General v. Moores, 55 Neb. 480, 76 N.W. 175 (1898), 41 L.R.A. 624 (1898).

Law of land and due process do not mean merely legislative enactments. The Atchison & Nebraska R.R. Co. v. Baty, 6 Neb. 37, 29 Am. R. 356 (1877).

**I-2. Slavery prohibited.**

There shall be neither slavery nor involuntary servitude in this state, otherwise than for punishment of crime, whereof the party shall have been duly convicted.

**Source:**Neb. Const. art. I, sec. 2. (1875).

**Annotation**

An employer's intentional concealment of the dangers inherent in the work environment and the true nature and effect of an occupational disease does not constitute involuntary servitude— use or threat of physical force or legal coercion to extract labor from an unwilling worker— thus construing the Workers' Compensation Act to include such conduct does not violate U.S. Const. amend. XIII or this provision. Abbott v. Gould, Inc., 232 Neb. 907, 443 N.W.2d 591 (1989).

Imprisonment at hard labor for contempt of court, arising out of violation of injunctive order, is involuntary servitude prohibited by this section. Smolczyk v. Gaston, 147 Neb. 681, 24 N.W.2d 862 (1946).

**I-3. Due process of law; equal protection.**

No person shall be deprived of life, liberty, or property, without due process of law, nor be denied equal protection of the laws.

**Source:**Neb. Const. art I, sec. 3 (1875); Amended 1998, Laws 1997, LR 20CA, sec. 1.

**Annotation**

**1. Criminal prosecutions**
**2. Vague or overbroad**
**3. Arbitrary or unreasonable**
**4. Procedural due process**
**5. Reasonable regulation**
**6. Deprived of liberty**
**7. Deprived of property**
**8. Contract rights**
**9. Labor and employment**
**10. Taxes and special assessments**
**11. Laws held generally to violate due process**
**12. Laws held generally not to violate due process**
**13. Miscellaneous**

**1. Criminal prosecutions**

The Due Process Clauses of the U.S. and Nebraska Constitutions preclude admissibility of an involuntary confession. State v. Bormann, 279 Neb. 320, 777 N.W.2d 829 (2010).

The amendment to this provision providing that "no person shall ... be denied equal protection of the laws" operates prospectively only. In order to prove that a defendant's race unconstitutionally taints enforcement of the death penalty, the defendant must at a minimum establish that the decision to enforce the death penalty is based on a conscious discriminatory purpose, resulting in a discriminatory effect suffered by the defendant. A defendant has a life interest in connection with the imposition of the death penalty and is entitled to due process in the imposition of the sentence. State v. Reeves, 258 Neb. 511, 604 N.W.2d 151 (2000).

This section provides that no person shall be deprived of liberty "without due process of law", and article I, section 11, provides that the accused in a criminal prosecution shall have the right to "trial by an impartial jury". These provisions are interconnected and require that criminal convictions rest upon a jury determination that a criminal defendant is guilty beyond a reasonable doubt of every element of the crime charged. State v. White, 249 Neb. 381, 543 N.W.2d 725 (1996).

The due process clause of this provision precludes admissibility of an involuntary confession. State v. Mantich, 249 Neb. 311, 543 N.W.2d 181 (1996).

The due process clause precludes admissibility of an involuntary confession. State v. Martin, 243 Neb. 368, 500 N.W.2d 512 (1993).

Allegedly coercive conduct on the part of private detective obtaining a statement from defendant did not carry over to statement made by defendant several hours later in the presence of others. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).

Section 29-2203 does not violate either the U.S. or Nebraska Constitution. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

Prosecutions for felonies, including murder, may be had on informations filed by the county attorney, and such procedure neither violates the 14th amendment to the U.S. Constitution nor the due process clause of the Nebraska Constitution. State v. Burchett, 224 Neb. 444, 399 N.W.2d 258 (1986).

No one has a vested right in a procedure, and procedural matters can be changed at any time before trial and are binding on a defendant. State v. Palmer, 224 Neb. 282, 399 N.W.2d 706 (1986).

Photographic lineup did not violate due process despite defendant's argument that the identification procedure was unduly suggestive in that the relative heights of suspects were readily determinable by reference to the strategically placed doorframe visible in each photograph. State v. Palmer, 224 Neb. 282, 399 N.W.2d 706 (1986).

Trial court's determination that defendant's incriminating statements were made in a non-custodial setting was not clearly wrong; thus, police did not violate defendant's constitutional right against self-incrimination. State v. Saylor, 223 Neb. 694, 392 N.W.2d 789 (1986).

Due process is afforded defendant in capital case by the traditional trial to court or jury, the presentence report on defendant, a presentence hearing and findings relating to aggravating and mitigating circumstances, and automatic review in Supreme Court, all to assure the death penalty will not be imposed arbitrarily or capriciously. State v. Simants, 197 Neb. 549, 250 N.W.2d 881 (1977); State v. Rust, 197 Neb. 528, 250 N.W.2d 867 (1977).

Sections 29-3301 to 29-3307 do not violate privilege against self-incrimination, are constitutional, and apply to physical evidence, not to oral communications or testimony. State v. Swayze, 197 Neb. 149, 247 N.W.2d 440 (1976).

Due process does not require a prosecuting attorney to hold an adversary hearing prior to determining the manner in which a minor defendant shall be proceeded against. State v. Grayer, 191 Neb. 523, 215 N.W.2d 859 (1974).

Whether an identification procedure is violative of due process will be determined upon a consideration of the totality of the circumstances surrounding it. State v. Sanchell, 191 Neb. 505, 216 N.W.2d 504 (1974).

Failure to appoint counsel to represent a defendant in a criminal case upon appeal did not violate this section. State v. Dabney, 181 Neb. 263, 147 N.W.2d 768 (1967).

Use of any confession obtained in violation of the due process clause requires reversal of the conviction, even though there is other evidence sufficient to sustain the conviction. State v. Long, 179 Neb. 606, 139 N.W.2d 813 (1966).

Due process of law in a criminal case includes right to trial by jury and right to defend in person or by counsel. Johnson v. State, 169 Neb. 783, 100 N.W.2d 844 (1960).

Detention in jail for six months awaiting trial was not a denial of due process. Svehla v. State, 168 Neb. 553, 96 N.W.2d 649 (1959).

Proceedings in contempt were not violative of due process. Cornett v. State, 155 Neb. 766, 53 N.W.2d 747 (1952).

Denial of continuance did not operate to violate due process clause. Hawk v. State, 151 Neb.

717, 39 N.W.2d 561 (1949).

Where a jury in a criminal case disagrees and is properly discharged, a second trial upon original charge, even though one or more degrees of the offense have been withdrawn, does not violate this section. State v. Hutter, 145 Neb. 798, 18 N.W.2d 203 (1945).

A person charged with a crime waives constitutional rights by judicial confession of guilt. In re Application of Carper, Tesar v. Bowley, 144 Neb. 623, 14 N.W.2d 225 (1944).

Where, after objection that copy of amended information had not been served, trial proceeded upon the original information which had been served, there was no violation of this section. Hoctor v. State, 141 Neb. 329, 3 N.W.2d 558 (1942).

An information alleging all facts necessary to constitute a criminal offense, does not violate constitutional provision as to due process of law. Chadek v. State, 138 Neb. 626, 294 N.W. 384 (1940).

Habitual criminal statute upheld. Right of accused to counsel deemed waived where no demand made. Davis v. O'Grady, 137 Neb. 708, 291 N.W. 82 (1940).

Due process of law in a criminal case requires a law creating or defining the offense, a court of competent jurisdiction, accusation in due form, notice and opportunity to answer the charge, trial according to the settled course of judicial proceeding, and a right to be discharged unless found guilty. Dutiel v. State, 135 Neb. 811, 284 N.W. 321 (1939).

Statute prohibiting granting of new trial if Supreme Court considers that no substantial miscarriage of justice has actually occurred, does not justify court in denying new trial where accused's constitutional right to fair trial was violated. Scott v. State, 121 Neb. 232, 236 N.W. 608 (1931).

The Constitution guarantees a fair and impartial trial to every person accused of crime, and that no person shall be compelled in any criminal case to be a witness against himself, nor shall he be deprived of life, liberty, or property without due process of law. Coxbill v. State, 115 Neb. 634, 214 N.W. 256 (1927).

The judge of a district court has no jurisdiction to try and determine the guilt or innocence of a defendant charged with a felony who pleads not guilty, without a trial to a jury, and such jurisdiction cannot be conferred by consent of the accused. Michaelson v. Beemer, 72 Neb. 761, 101 N.W. 1007 (1904).

Prosecution of accused on information of prosecuting attorney did not contravene the due process of law clause of the Constitution. Bolln v. State, 51 Neb. 581, 71 N.W. 444 (1897).

Although due process does not require the appointment of counsel to represent a prisoner in a private civil matter, due process does require that the prisoner receive meaningful access to the courts to defend against suits brought against him or her. Conn v. Conn, 13 Neb. App. 472, 695 N.W.2d 674 (2005).

**2. Vague or overbroad**

Statute providing it shall be unlawful just to be in place where controlled substance is being used illegally is unconstitutionally vague and overbroad. State v. Adkins, 196 Neb. 76, 241 N.W.2d 655 (1976).

Motor vehicle flight to avoid arrest, act held unconstitutional upon the ground of vagueness and uncertainty. Heywood v. Brainard, 181 Neb. 294, 147 N.W.2d 772 (1967).

Grade A Milk Act contained an unlawful delegation of legislative power to an administrative agency and was unconstitutional. Lincoln Dairy Co. v. Finigan, 170 Neb. 777, 104 N.W.2d 227 (1960).

Municipal ordinance directed against obscene publications was void for uncertainty. State v. Pocras, 166 Neb. 642, 90 N.W.2d 263 (1958).

**3. Arbitrary or unreasonable**

In setting rates that may be charged by a utility, a state cannot set rates which are unjust, unreasonable, and confiscatory and which, therefore, deprive the utility of property without the due process of law. K N Energy, Inc. v. Cities of Broken Bow et al., 244 Neb. 113, 505 N.W.2d 102 (1993).

If it becomes apparent that a statute does not tend to preserve the public health, safety, or welfare but tends more to stifle legitimate business by creating a monopoly or trade barrier, it is unconstitutional. Gillette Dairy, Inc. v. Nebraska Dairy Products Board, 192 Neb. 89, 219 N.W.2d 214 (1974).

Public Auction Law imposes arbitrary and unreasonable limitations on conduct of a lawful business. Blauvelt v. Beck, 162 Neb. 576, 76 N.W.2d 738 (1956).

Primary purpose of constitutional guaranty afforded by this section was security of the individual from the arbitrary exercise of the powers of government. Rein v. Johnson, 149 Neb. 67, 30 N.W.2d 548 (1947).

Prohibiting manufacture and sale of milk to which has been added any fat or oil other than milk, violates the Constitution as being arbitrary and unreasonable and taking property without due process of law. Carolene Products Co. v. Banning, 131 Neb. 429, 268 N.W. 313 (1936).

Statute regulating size of loaf of bread and authorizing Secretary of Agriculture to fix reasonable excess tolerance is not violative of due process clause. Petersen Baking Co. v. Bryan, 290 U.S. 570 (1934), affirming 124 Neb. 464, 247 N.W. 39 (1933).

Statute fixing maximum weights for loaves of bread is repugnant to the Fourteenth Amendment of the Constitution of the United States. Burns Baking Co. v. Bryan, 264 U.S. 504 (1924), reversing Burns Baking Co. v. McKelvie, 108 Neb. 674, 189 N.W. 383 (1922).

**4. Procedural due process**

Municipal employees' claim that they were denied substantive due process of law by employer's payment of disability pension benefits failed because employees presented no evidence that employer denied employees the benefit of vested employment benefits. Constitutional deprivations are not founded upon speculation or mere possibilities. Bauers v. City of Lincoln,

255 Neb. 572, 586 N.W.2d 452 (1998).

The exclusive remedy provided by the Workers' Compensation Act satisfies the due process requirements of this provision, as well as the requirements of Neb. Const. art. I, section 13, that every person shall have a remedy by due course of law for any injury done to him or her. Abbott v. Gould, Inc., 232 Neb. 907, 443 N.W.2d 591 (1989).

The hearing each motorist has on each offense before points are assessed, and right to appeal to district court from revocation of his motor vehicle operator's license under sections 39-669.27 and 39-669.28, R.R.S.1943, pending which the court may stay revocation, provide due process. Stauffer v. Weedlun, 188 Neb. 105, 195 N.W.2d 218 (1972).

A person has no property in rules of the common law and such rules subject to constitutional limitations may be changed by the Legislature. State Securities Co. v. Norfolk Livestock Sales Co., Inc., 187 Neb. 446, 191 N.W.2d 614 (1971).

Preliminary hearing before a county judge not an attorney not violative of this section. State v. Howard, 184 Neb. 274, 167 N.W.2d 80 (1969).

Statute providing for withdrawal from area vocational technical schools did not violate this section in failing to provide hearing for determination of validity of signatures. Chaloupka v. Area Vocational Technical School No. 2, 184 Neb. 196, 165 N.W.2d 719 (1969).

Requirement for furnishing of probate appeal bond did not deprive party of due process of law. Rundall v. Whiteside, 182 Neb. 176, 153 N.W.2d 736 (1967).

Requirement of due process of law was satisfied by original notice of hearing before board of appraisers in eminent domain proceedings. Weiner v. State, 179 Neb. 297, 137 N.W.2d 852 (1965).

The incorporation of a village by the county board upon a petition of a majority of the taxable inhabitants is not a denial of due process of law. Kriz v. Klingensmith, 176 Neb. 205, 125 N.W.2d 674 (1964).

Due process of law was not denied by failure to mail notice of intention to pass resolution of necessity declaring advisability of constructing sewer. Jones v. Village of Farnam, 174 Neb. 704, 119 N.W.2d 157 (1963).

Procedure for investigation of conduct of attorneys was not a denial of due process of law. State ex rel. Nebraska State Bar Assn. v. Jensen, 171 Neb. 1, 105 N.W.2d 459 (1960).

Prosecution before a judge disqualified by pecuniary interest is a violation of due process of law. Conkling v. DeLany, 167 Neb. 4, 91 N.W.2d 250 (1958).

Provision for service of process upon Director of Banking in action for violation of Installment Loan Act was constitutional. McNish v. General Credit Corp., 164 Neb. 526, 83 N.W.2d 1 (1957).

Act for change of boundaries of school district required notice and opportunity to be heard.

Schutte v. Schmitt, 162 Neb. 162, 75 N.W.2d 656 (1956).

Judgment is void unless a proper method of notification is employed. Board of Trustees of York College v. Cheney, 160 Neb. 631, 71 N.W.2d 195 (1955).

Service under reciprocal nonresident guardianship act did not violate due process clause. Howell v. Fletcher, 157 Neb. 196, 59 N.W.2d 359 (1953).

Statute authorizing annexation of additional territory of rural fire protection district did not deny due process. Seward County Rural Fire Protection Dist. v. County of Seward, 156 Neb. 516, 56 N.W.2d 700 (1953).

Fact that examiner of State Railway Commission considered the interrelationship of various applications when determining action to be taken on each application separately was not a denial of due process. In re Application of Petersen & Petersen, Inc., 153 Neb. 517, 45 N.W.2d 465 (1951).

Party who invoked special proceeding could not question constitutionality thereof under this section. Lackaff v. Department of Roads & Irrigation, 153 Neb. 217, 43 N.W.2d 576 (1950).

Action of county board in determining population of county at a secret meeting without notice to county officers whose salaries were thereby affected, vitally affected the rights and interests of the officers and is void. Shambaugh v. Buffalo County, 133 Neb. 46, 274 N.W. 207 (1937).

Where juror failed to disclose his ineligibility when questioned by trial court, and is permitted to serve on jury, a new trial should be granted. Berg v. Griffiths, 126 Neb. 235, 252 N.W. 918 (1934).

A statute providing that an action for injury to person or property by a common carrier, bus or trucking company may be brought in any county on the road or line where service could be obtained on a driver thereof is not improper or taking of property without due process of law. Schwarting v. Ogram, 123 Neb. 76, 242 N.W. 273 (1932), 81 A.L.R. 769 (1932).

Statute authorizing counties to foreclose lien for taxes delinquent more than three years is not taking property without due process of law. Commercial Savings & Loan Assn. v. Pyramid Realty Co., 121 Neb. 493, 237 N.W. 575 (1931).

Legislation authorizing county superintendent, clerk, and county board to change boundary lines between school districts without notice or hearing is a violation of due process of law. Ruwe v. School District No. 85 of Dodge County, 120 Neb. 668, 234 N.W. 789 (1931).

Statute relating to service on nonresident car owners is constitutional except as to provision for 90 day continuance and does not deprive such owners of property without due process of law. Herzoff v. Hommel, 120 Neb. 475, 233 N.W. 458 (1930).

Statute empowering department to cancel water appropriation, in view of provision for notice and appeal does not deprive one of his property without due process of law. Dawson County Irr. Co. v. McMullen, 120 Neb. 245, 231 N.W. 840 (1930).

Curative act to validate proceedings for creation of a light and power district, but applicable only to particular district, is unconstitutional because it violates due process of law clause. Anderson v. Lehmkuhl, 119 Neb. 451, 229 N.W. 773 (1930).

Where an increase in the assessed valuation of property as returned by county, is made by the State Board of Equalization without notice and without affording sufficient opportunity to be heard, it amounts to confiscation of property without due process. American Tel. & Tel. Co. v. State Board of Equalization & Assessment, 119 Neb. 142, 227 N.W. 455 (1929); Northwestern Bell Tel. Co. v. State Board of Equalization & Assessment, 119 Neb. 138, 227 N.W. 452 (1929); Lincoln Tel. & Tel. Co. v. State Board of Equalization & Assessment, 119 Neb. 137, 227 N.W. 454 (1929); Stanton County v. State Board of Equalization & Assessment, 119 Neb. 136, 227 N.W. 454 (1929).

Failing to provide for notice to resident owners of appraisers' meeting to assess damages in condemnation proceedings by county contravened the Constitution. Sheridan County v. Hand, 114 Neb. 813, 210 N.W. 273 (1926).

The issuance of bonds upon a petition of not less than fifty-one per cent of the voters stands upon the same legal footing as bonds issued by virtue of an election and the fact the taxpayer is given no opportunity to contest the validity of the bonds is not taking of property without due process of law. McCord v. Marsh, 108 Neb. 723, 189 N.W. 386 (1922).

Failure to provide in statute for notice to the property owner of the time and place at which the appraisers would meet for purpose of making their assessment in condemnation of school site is unconstitutional and actual notice cannot operate as a substitute. Albin v. Consolidated School Dist. No. 14 of Richardson County, 106 Neb. 719, 184 N.W. 141 (1921).

Law permitting jury, in court's discretion, to view premises does not violate constitutional provision of taking property without due process of law. Drollinger v. Hastings & N. W. R. R. Co., 98 Neb. 520, 153 N.W. 619 (1915).

Law purporting to validate proceedings of probate court under prior act which had been held unconstitutional contravenes due process of law and is unconstitutional. Draper v. Clayton, 87 Neb. 443, 127 N.W. 369 (1910).

Striking answer from files and denying defendant right to further defense in divorce suit violates the constitutional right of the defendant to due process of law. McNamara v. McNamara, 86 Neb. 631, 126 N.W. 94 (1910).

No judgment of a court is due process of law if rendered without jurisdiction in the court, or without due notice to the party. Herman v. Barth, 85 Neb. 722, 124 N.W. 135 (1910).

To constitute due process of law it is not necessary that notice be given of each step in the process of taxation. It is sufficient if the taxpayer has an opportunity to appear, at some time before a tribunal having jurisdiction, and there procure an adjustment of his liabilities. State v. Several Parcels of Land, 83 Neb. 13, 119 N.W. 21 (1908).

Statute authorizing the revival of a dormant judgment against a nonresident upon service by publication is not repugnant to state Constitution. White v. Ress, 80 Neb. 749, 115 N.W. 301

(1908).

Statute providing for the organization of a drainage district whenever the same will promote the public health, convenience or welfare, funds to be raised in proportion to benefits received, notice giving owner right to appear and be heard and to appeal from order of assignment, does not amount to the taking of private property for private use, nor for public use without just compensation nor without due process of law. State ex rel Harris v. Hanson, 80 Neb. 724, 115 N.W. 294 (1908).

A statute that provides for seizure and forfeiture of guns used in hunting out of season, if no hearing provided for, is unconstitutional. McConnell v. McKillip, 71 Neb. 712, 99 N.W. 505 (1904).

Whenever an opportunity is offered to invoke equal protection of law by judicial proceeding appropriate for the purpose and adequate to secure the end and object sought to be attained, due process of law is said to be satisfied. Reed v. Reed, 70 Neb. 779, 98 N.W. 73 (1904).

In an action to quiet the title to real estate on the grounds of adverse possession, the former owner has not been deprived of his property without due process of law if the period has expired which, under the law, would bar an action for its recovery by the real owner. Linton v. Heye, 69 Neb. 450, 95 N.W. 1040 (1903), affirmed in 194 U.S. 628 (1904).

Act providing for assessment of damages under herd law, by arbitration, if cumulative, and not exclusive is not taking of property without due process of law. Randall v. Gross, 67 Neb. 255, 93 N.W. 223 (1903).

Statute providing that all witness fees and costs uncalled for within a certain specified time, in default of which they shall be paid into school fund is not taking of property without due process of law. Douglas County v. Moores, 66 Neb. 284, 92 N.W. 199 (1902).

Drainage district assessments, where owners are given opportunity to appear and be heard and accorded a right to review, are not taking of property without due process of law. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

Lord Campbell's Act gives right of action to personal representative of deceased for death of passenger and does not deprive railroad companies of their property without due process of law. Chicago, R. I. & P. Ry. Co. v. Zernecke, 59 Neb. 689, 82 N.W. 26 (1900); Chicago, R. I. & P. Ry. Co. v. Hambel, 2 Neb. Unof. 607, 89 N.W. 643 (1902).

"Due process of law" is defined as such exertion of power of government as sanctioned by settled maxims of law and under such safeguards for protection of individual rights as prescribed for class of cases to which the one in question belongs. It has never been construed as right to be heard in court of last resort, but is satisfied by proceeding applicable to subject matter and conformable to such general rules as affect all persons alike. Chicago, B. & Q. R. R. Co. v. Headrick, 49 Neb. 286, 68 N.W. 489 (1896).

Providing for organization of drainage districts and charging lands for payment of bonds, upon petition and notice is valid. Board of Directors of Alfalfa Irrigation Dist. v. Collins, 46 Neb. 411, 64 N.W. 1086 (1895).

A statute authorizing a city to change existing grades but failing to provide for notice to property owners of appraisers' meeting is unconstitutional. McGavock v. City of Omaha, 40 Neb. 64, 58 N.W. 543 (1894).

Due process requires that a prisoner receive meaningful access to the courts to defend civil suits brought against the prisoner. Board of Regents v. Thompson, 6 Neb. App. 734, 577 N.W.2d 749 (1998).

**5. Reasonable regulation**

Due process is not violated in termination of parental rights statutes where a parent of ordinary intelligence can ascertain, without guessing, the prescribed standards governing parental conduct. State v. A. H., 198 Neb. 444, 253 N.W.2d 283 (1977).

Section 39-6,193, imposing vicarious liability on owners-lessors of trucks for damages by lessees and operators of the leased trucks, is constitutional. Bridgeford v. U-Haul Co., 195 Neb. 308, 238 N.W.2d 443 (1976).

Legislative act requiring continuous residency of four months independent of school attendance to establish residence for tuition purposes does not violate this section. Thompson v. Board of Regents of University of Nebraska, 187 Neb. 252, 188 N.W.2d 840 (1971).

Prohibiting wholesaler from giving discounts for quantity purchases of alcoholic liquor to retailers is not a denial of due process. Central Markets West, Inc. v. State, 186 Neb. 79, 180 N.W.2d 880 (1970).

Statute authorizing county board to relocate roads did not violate this section. Emry v. Lake, 181 Neb. 568, 149 N.W.2d 520 (1967).

Statute providing for limited access to interstate highway is not violative of due process. Fougeron v. County of Seward, 174 Neb. 753, 119 N.W.2d 298 (1963)

Act authorizing revocation of driver's license for failure to submit to blood or urine test did not violate this section. Prucha v. Department of Motor Vehicles, 172 Neb. 415, 110 N.W.2d 75 (1961).

Statute requiring a warehouseman to report list of property held in storage was not a denial of due process of law. United States Cold Storage Corp. v. Stolinski, 168 Neb. 513, 96 N.W.2d 408 (1959).

Statute prohibiting state and federal officers and employees from being delegates to county, district, and state political conventions did not violate this section. State ex rel. Baldwin v. Strain, 152 Neb. 763, 42 N.W.2d 796 (1950).

Act requiring proper lights on mainline switch stands by railroads was not void under due process clause. State v. Chicago & N.W. Ry. Co., 147 Neb. 970, 25 N.W.2d 824 (1947).

Claim made and rejected that appropriation of surface and ground waters without compensation violated this section. Dischner v. Loup River P.P. Dist., 147 Neb. 949, 25 N.W.2d 813 (1947).

Legislative act providing for proceedings with reference to children born out of wedlock sustained as constitutional. In re Application of Rozgall, 147 Neb. 260, 23 N.W.2d 85 (1946).

While it is competent for the Legislature to classify, the classification, to be valid, must rest on some reason of public policy, or some substantial difference of situation or circumstances, that would naturally suggest the justice or expediency of diverse legislation with respect to the objects classified. Webber v. City of Scottsbluff, 141 Neb. 363, 3 N.W.2d 635 (1942).

Statutes creating housing authorities and granting right of eminent domain to operate for slum clearance do not violate due process clause. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

Act regulating and licensing sale of motor vehicles, and prohibiting price discriminations does not interfere with rights of property or personal liberty. Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388 (1939).

Act regulating manufacture of ice cream and dairy products is a proper exercise of police power. State v. McCosh, 134 Neb. 780, 279 N.W. 775 (1938).

City ordinance requiring persons engaged in business of moving houses to procure licenses is constitutional and reasonable exercise of police power. State v. Phillips, 133 Neb. 209, 274 N.W. 459 (1937).

Ordinance requiring peddler to have a license must be reasonable, considering the nature of the business and not so high as to prohibit the carrying on of the business. Hoyt Bros. v. City of Lincoln, 130 Neb. 79, 263 N.W. 898 (1936).

Zoning ordinance enacted as having substantial relation to public health, safety and general welfare is not deprivation of property without due process of law. State ex rel. Herbert v. Anderson, 122 Neb. 738, 241 N.W. 545 (1932); City of Lincoln v. Logan-Jones, 120 Neb. 827, 235 N.W. 583 (1931); City of Lincoln v. Foss, 119 Neb. 666, 230 N.W. 592 (1930).

Statute denying to persons under 16 the right to motor vehicle drivers' license is not in violation of this section. State ex rel. Oleson v. Graunke, 119 Neb. 440, 229 N.W. 329 (1930).

A valid exercise of police power may affect or destroy values where the use of the property for its original purpose has become unlawful by a change in public policy as disclosed by a new statute, but legislation on that ground is constitutional and does not deprive one of property without due process of law. Miller v. McLaughlin, 118 Neb. 174, 224 N.W. 18 (1929), affirmed in 281 U.S. 261 (1930).

Statute relating to drainage by irrigation company of sub-irrigated land is constitutional and does not violate the due process clause of Constitution. State ex rel. Read v. Farmers Irr. Dist., 116 Neb. 373, 217 N.W. 607 (1928).

Authorizing life insurance company to change plan of business from mutual to stock by amending articles does not violate provision relating to due process of law in Constitution. Leininger v. North Amer. Nat. L. Ins. Co., 115 Neb. 801, 215 N.W. 167 (1927).

Prohibiting foreign installment investment company doing business without certificate of approval by Department of Trade and Commerce is not in violation of due process of law. Investors Syndicate v. Bryan, 113 Neb. 816, 205 N.W. 294 (1925).

Statute prohibiting the soliciting of certain classes of claims for the purpose of instituting suits thereon outside of the state and providing a penalty therefor, are regulatory measures and as such, do not infringe the rights of an individual under the Constitution. Chicago, B. & Q. R. R. Co. v. Davis, 111 Neb. 737, 197 N.W. 599 (1924).

Statute providing for the housing of municipal courts in the county courthouse does not interfere with vested rights of the county in such property, and is not unconstitutional as a deprivation of the use of property without due process of law. State ex rel. City of Omaha v. Bd. of County Commissioners of Douglas County, 109 Neb. 35, 189 N.W. 639 (1922).

Statute prohibiting liquor to be kept elsewhere than in private dwelling is not in violation of constitutional provision for due process of law. Fitch v. State, 102 Neb. 361, 167 N.W. 417 (1918).

City ordinance prohibiting the removal of garbage through the streets or alleys by any one not employed by the city for that purpose, is not unconstitutional as taking the property of a restaurant proprietor for public use without just compensation or as depriving him of his property without due process of law. Urbach v. City of Omaha, 101 Neb. 314, 163 N.W. 307 (1917).

Statute fixing maximum rates of premium for surety and fidelity companies under certain circumstances by the insurance board is not taking property without due process of law. State ex rel. Martin v. Howard, 96 Neb. 278, 147 N.W. 689 (1914).

Ordinance prohibiting billiard and pool halls does not take property without due process of law. Cole v. Village of Culbertson, 86 Neb. 160, 125 N.W. 287 (1910); McCarter v. City of Lexington, 80 Neb. 714, 115 N.W. 303 (1908).

Every property holder is secured in his title thereto and holds it under implied rule and understanding that its use may be so regulated and restricted that it shall not be injurious to others having equal right of enjoyment of their property, or to the rights of the community. Wenham v. State, 65 Neb. 394, 91 N.W. 421 (1902).

Statute prohibiting transfer of mortgaged chattels without written consent does not violate Constitution. State v. Heldenbrand, 62 Neb. 136, 87 N.W. 25 (1901).

Statute imposing penalty for neglecting to remove obstruction in line of newly established highway does not deprive owner of property without due process of law. Black v. Stein, 23 Neb. 302, 36 N.W. 548 (1888).

Zoning ordinance of city of Lincoln limiting the rental of a single-family dwelling to one family, which is defined as including not more than three unrelated persons, does not violate due process. State v. Champoux, 5 Neb. App. 68, 555 N.W.2d 69 (1996).

Statute allowing reasonable attorney's fees to plaintiff in suit on policy covering real property does not violate the Constitution on taking of property without due process of law. Farmers & Merchants Ins. Co. v. Dobney, 189 U.S. 301 (1903).

Statute regulating the practice of veterinary medicine and surgery is not a violation of this section. Peet Stock Remedy Co. v. McMullen, 32 F.2d 669 (8th Cir. 1929).

Amendment to charter and ordinance thereunder authorizing city to sell gasoline and oil does not violate provision of Constitution relating to taking of property without due process of law. Mutual Oil Co. v. Zehrung, 11 F.2d 887 (D. Neb. 1925).

**6. Deprived of liberty**

A state constitutional provision is not elevated to a fundamental right solely because it mandates legislative action. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

Besides guaranteeing fair process, the Nebraska due process clause provides heightened protection against government interference with certain fundamental rights and liberty interests. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

Fundamental rights are those implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

The Nebraska due process clause forbids the government from infringing upon a fundamental liberty interest, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

When a classification created by state action does not jeopardize the exercise of a fundamental right or categorize because of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

A penal law which makes criminal an act which the utmost care and circumspection would not enable one to avoid violates this section. Markham v. Brainard, 178 Neb. 544, 134 N.W.2d 84 (1965).

Sexual psychopath law did not deprive accused of his liberty without due process of law. State v. Madary, 178 Neb. 383, 133 N.W.2d 583 (1965).

Sentence of juvenile offender to state penitentiary was not a denial of due process of law. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

Habitual criminal law, defining habitual criminal and providing punishment therefor, is not violative of this section. Rains v. State, 142 Neb. 284, 5 N.W.2d 887 (1942).

**7. Deprived of property**

The right of ingress and egress by way of a street is a property right of which an abutting

property owner cannot be deprived without compensation. Swanson v. State Dept. of Roads, 178 Neb. 671, 134 N.W.2d 810 (1965).

Statute requiring fencing of right-of-way of railroads did not deprive railroad company of due process of law. Linenbrink v. Chicago & N.W. Ry. Co., 177 Neb. 838, 131 N.W.2d 417 (1964).

Statutory authorization for recovery of treble the actual damages sustained violates this section. Abel v. Conover, 170 Neb. 926, 104 N.W.2d 684 (1960).

Legislative act will not be permitted to operate retrospectively when effect would be to interfere with vested rights. Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960).

Holder of school land lease giving option to purchase fee title could not be deprived of that right by subsequent legislation. Pfeifer v. Ableidinger, 166 Neb. 464, 89 N.W.2d 568 (1958).

Right of owner of property abutting a street to ingress and egress to and from his premises is a property right of which he cannot be deprived without due process of law. Hillerege v. City of Scottsbluff, 164 Neb. 560, 83 N.W.2d 76 (1957).

Repeal of ordinance creating a water district did not invade any property rights. Brasier v. City of Lincoln, 159 Neb. 12, 65 N.W.2d 213 (1954).

Suspension of license under Motor Vehicle Safety Responsibility Act does not deprive licensee of property right. Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952).

Provision for allowance of claim for reimbursement against recipient of old age assistance is not violative of due process. Boone County Old Age Assistance Board v. Myhre, 149 Neb. 669, 32 N.W.2d 262 (1948).

Relieving drainage district from liability for damages because of vote of landowners not to become part thereof violated this section. Cooper v. Sanitary District No. 1 of Lancaster County, 146 Neb. 412, 19 N.W.2d 619 (1945).

Zoning ordinance requiring certain size of buildings and ground area did not operate to deny property owners due process of law. Dundee Realty Co. v. City of Omaha, 144 Neb. 448, 13 N.W.2d 634 (1944).

It is a general rule that a person has no vested right in statutory licenses, permits or privileges. Beisner v. Cochran, 138 Neb. 445, 293 N.W. 289 (1940).

Statute making a stay bond a judgment against the surety does not conflict with the due process clause. Baker Steel & Machinery Co. v. Ferguson, 137 Neb. 578, 290 N.W. 449 (1940).

Act taking away right of licensees to sell alcoholic liquors at wholesale in quart bottles, by fixing uniform standards for containers, though reducing value of property formerly used in liquor traffic, does not violate constitutional provision. Marsh & Marsh v. Carmichael, 136 Neb. 797, 287 N.W. 616 (1939).

Statute authorizing reparation of freight rates unlawfully collected cannot be construed to permit

retroactive action by Railway Commission. Farmers Union Livestock Commission v. Union Pacific R. R. Co., 135 Neb. 689, 283 N.W. 498 (1939).

Every person legally possesses the right of acquiring the absolute and unqualified title to every species of property recognized by law, with all rights incidental thereto, and, in connection with the right of personal liberty, it includes the right to dispose of such property in such innocent manner as he pleases, and to sell it at such price as he can obtain in fair barter. State ex rel. English v. Ruback, 135 Neb. 335, 281 N.W. 607 (1938).

Public power districts taking land by eminent domain does not violate due process clause of Constitution providing just compensation is paid. Johnson v. Platte Valley Public Power & Irr. Dist., 133 Neb. 97, 274 N.W. 386 (1937).

Creating depositors' final settlement fund authorizing assessment against state banks for payment of losses in banks closed is invalid for the reason one is deprived of his property without due process. Hubbell Bank v. Bryan, 124 Neb. 51, 245 N.W. 20 (1932), certiorari denied 289 U.S. 753 (1933).

Water right acquired prior to 1895 is a vested property right not to be taken away by legislative action. City of Fairbury v. Fairbury Mill & Elevator Co., 123 Neb. 588, 243 N.W. 774 (1932).

City ordinance prohibiting installation and operation of "automatic coin-in-the-slot gasoline pumps" at filling station is not violative of this section. Hawkins v. City of Red Cloud, 123 Neb. 487, 243 N.W. 431 (1932).

Statute transferring assets from depositors' guaranty fund to depositors' final settlement fund, excluding assets subject to payment of judgment liens, is not a violation of due process clause. Bliss v. Bryan, 123 Neb. 461, 243 N.W. 625 (1932).

Appropriation by Legislature of public money to reimburse depositors for losses sustained by depositors in banks operated by guaranty fund commission is in violation of due process provision of federal and state Constitutions. Weaver v. Koehn, 120 Neb. 114, 231 N.W. 703 (1930).

Statute authorizing license to guardian to mortgage insane ward's realty without requiring notice to ward does not violate the Constitution relating to taking of property without due process of law. Mead v. Polly, 119 Neb. 206, 228 N.W. 369 (1929).

Order of Railway Commission requiring the physical connection of two telephone companies and directing that they shall divide all new business in a certain proportion, is in effect taking of property without due process of law. Blackledge v. Farmers Independent Tel. Co. of Red Cloud, 105 Neb. 713, 181 N.W. 709 (1921), 16 A.L.R. 343 (1921).

Law depriving citizens of right to sell hog-cholera serum under certain conditions is unconstitutional. Hall v. State, 100 Neb. 84, 158 N.W. 362 (1916), L.R.A. 1916F 136 (1916).

Order of Railway Commission requiring railroad to construct private overhead crossing violates due process of law as provided in the Constitution. Postle v. Chicago, B & Q. R. R. Co., 98 Neb. 192, 152 N.W. 379 (1915).

Ordinance declaring that the carcasses of all dead animals found within the city, which were not slain for food, should at once become the property of the public contractor, is void so far as it attempts to take private property without due process of law. Whelan v. Daniels, 94 Neb. 642, 143 N.W. 929 (1913).

License to sell intoxicating liquors is but a mere temporary permit and is not a property right within the meaning of this section. Harding v. Board of Equalization of Douglas County, 90 Neb. 232, 133 N.W. 191 (1911).

A statute limiting the dower right of a non-resident widow to lands of which her husband died seized, and extending the dower right of a resident widow to other lands, does not contravene the Constitution. Miner v. Morgan, 83 Neb. 400, 119 N.W. 781 (1909).

Statute authorizing the entry of a judgment for costs against a complaining witness in a criminal case is unconstitutional. Teats v. Fox, 75 Neb. 747, 106 N.W. 779 (1906); Rickley v. State, 65 Neb. 841, 91 N.W. 867 (1902).

Statute preventing and punishing the desecration of the flag of the United States is not obnoxious to the provisions of Constitution against depriving any person of his property without due process of law and against special or class legislation. Halter v. State, 74 Neb. 757, 105 N.W. 298 (1905).

Divesting persons entitled thereto of unclaimed witness fees for benefit of school fund is taking of property without due process of law. State ex rel. Broatch v. Moores, 52 Neb. 770, 73 N.W. 299 (1897).

Commission's order to compel railroad to establish underpass for convenience and benefit of landowner in use of his own property is taking of property without due process of law. Chicago, St. P., M. & O. Ry. Co. v. Holmberg, 282 U.S. 162 (1930), Holmberg v. Chicago, St. P., M. & O. Ry. Co., reversing 115 Neb. 727, 214 N.W. 746 (1927).

"Cedar Rust" law does not deprive cedar tree owners of property without due process of law. Upton v. Felton, 4 F.Supp. 585 (D. Neb. 1932).

**8. Contract rights**

Act reducing penalty for violation of Installment Loan Act did not violate this section. Davis v. General Motors Acceptance Corp., 176 Neb. 865, 127 N.W.2d 907 (1964).

Recovery on behalf of city by taxpayer of amount paid on void contract did not deny defendant due process of law. Arthur v. Trindel, 168 Neb. 429, 96 N.W.2d 208 (1959).

Construction of a collective bargaining contract decided upon contract and estoppel and not under due process clause of Constitution. Brisbin v. E. L. Oliver Lodge No. 335, 134 Neb. 517, 279 N.W. 277 (1938).

Statute may not operate retrospectively where it would impair obligation of contracts or interfere with vested rights. Travelers Ins. Co. v. Ohler, 119 Neb. 121, 227 N.W. 449 (1929).

Requiring contract work for a city to be performed by union labor violates the due process clause of the Constitution. Wright v. Hoctor, 95 Neb. 342, 145 N.W. 704 (1914).

Statutes on unfair competition do not contravene the Constitution relative to class legislation, freedom of contract or of taking property without due process of law. It is not the making of contracts which is forbidden, but the conduct, purpose and motives of the parties in connection with their acts. State v. Drayton, 82 Neb. 254, 117 N.W. 768 (1908).

Anti-pass law, imposing a penalty on either who give or receive a free railroad pass, is not an impairment of contract or taking property without due process of law. State v. Martyn, 82 Neb. 225, 117 N.W. 719 (1908).

Regulation of Board of Soldiers and Sailors Home providing that certain specific per cent of pension be paid into cash fund of home is a matter of contract and not that of depriving inmate of property without due process of law. Howell v. Sheldon, 82 Neb. 72, 117 N.W. 109 (1908).

**9. Labor and employment**

Sunday closing law violated this section and was unconstitutional in its entirety. Terry Carpenter, Inc. v. Wood, 177 Neb. 515, 129 N.W.2d 475 (1964).

Sunday closing ordinance of city of first class violated this section. Skag-Way Department Stores, Inc. v. City of Grand Island, 176 Neb. 169, 125 N.W.2d 529 (1964).

Fixing of a scale of wages to be paid by a successful contractor at a public letting violated this section. Philson v. City of Omaha, 167 Neb. 360, 93 N.W.2d 13 (1958).

City ordinance fixing closing hour of barber shops but not of beauty parlors is a discrimination within the due process clause of the Constitution. Ernesti v. City of Grand Island, 125 Neb. 688, 251 N.W. 899 (1933).

Statute requiring taxicab operators to deposit liability insurance or other security is not taking property without due process of law. Petersen v. Beal, 121 Neb. 348, 237 N.W. 146 (1931).

Ordinance prohibiting the selling or exchange of motor vehicles on Sunday is constitutional as police regulation. Stewart Motor Co. v. City of Omaha, 120 Neb. 776, 235 N.W. 332 (1931).

Sunday labor law is not repugnant to this section. In re Caldwell, 82 Neb. 544, 118 N.W. 133 (1908).

Statute regulating hours of employment of females in certain businesses is not unconstitutional. Wenham v. State, 65 Neb. 394, 91 N.W. 421 (1902).

Prescribing 8 hour day for certain kinds of labor is a denial of due process of law. Low v. Rees Printing Co., 41 Neb. 127, 59 N.W. 362 (1894).

**10. Taxes and special assessments**

A statute which authorized taxation of capital gain including portion of gain which accrued during taxing period prior to adoption of act was not unconstitutional. Altsuler v. Peters, 190 Neb. 113, 206 N.W.2d 570 (1973).

Laws for the levy and collection of general taxes stand upon a different footing than laws for the levy and collection of special assessments or special taxes. Frye v. Haas, 182 Neb. 73, 152 N.W.2d 121 (1967).

Penalty for failure to return personal property for taxation operated to deprive person of property without due process of law. Bachus v. Swanson, 179 Neb. 1, 136 N.W.2d 189 (1965).

An order by district court to produce a copy of income tax return is not a violation of due process clause of state Constitution. Rhodes v. Edwards, 178 Neb. 757, 135 N.W.2d 453 (1965).

Fixing of tax levy for municipal university did not violate due process clause. Ratigan v. Davis, 175 Neb. 416, 122 N.W.2d 12 (1963).

Action of State Board of Equalization and Assessment in raising values was not denial of due process. County of Howard v. State Board of Equalization & Assessment, 158 Neb. 339, 63 N.W.2d 441 (1954).

Ordinance of city of Lincoln imposing occupation tax on taxicabs does not violate due process of law. Richter v. City of Lincoln, 136 Neb. 289, 285 N.W. 593 (1939).

City taxes levied and assessed in accordance with home rule charter do not violate constitutional provision. Eppley Hotels Co. v. City of Lincoln, 133 Neb. 550, 276 N.W. 196 (1937).

Gross premium tax on foreign insurance companies is an excise tax on privilege of doing business in Nebraska, and not violative of due process clause of Constitution. State ex rel. Smrha v. General American Ins. Co., 132 Neb. 520, 272 N.W. 555 (1937).

Statute imposing excise tax on gasoline is consistent with the due process clause of the Constitution. Burke v. Bass, 123 Neb. 297, 242 N.W. 606 (1932).

A special assessment levied upon state banks was not deprivation of private property in violation of this section. Abie State Bank v. Weaver, 119 Neb. 153, 227 N.W. 922 (1929), affirmed in Abie State Bank v. Bryan, 282 U.S. 765 (1931).

Sanitary District Law does not require the officers of a sanitary district to give notice of the levying of a tax which is within their power to levy; if they exceed their power, they may be enjoined. Whedon v. Wells, 95 Neb. 517, 145 N.W. 1007 (1914).

Occupation tax is a revenue measure and does not violate this section. Norris v. City of Lincoln, 93 Neb. 658, 142 N.W. 114 (1913).

Due process of law does not necessarily require a judicial hearing in matters of taxation. Trainor v. Maverick Loan & Trust Co., 80 Neb. 626, 114 N.W. 932 (1908).

The provisions of the statute granting the landowner the right to object to the confirmation of sale, affords him an opportunity to have the question of the validity of the tax determined before he is deprived of his property. State v. Several Parcels of Land, 75 Neb. 538, 106 N.W. 663 (1906).

Statute providing for an assessment of railway property by State Board of Equalization is not deprivation of property by taxation without due process of law. Chicago, B. & Q. R. R. Co. v. Richardson County, 72 Neb. 482, 100 N.W. 950 (1904); State ex rel. Morton v. Back, 72 Neb. 402, 100 N.W. 952 (1904).

An owner is not deprived of his property without due process of law if he has an opportunity to question its validity or the amount of tax or assessment at some stage of the proceedings, either before the amount is finally determined or in subsequent proceedings for its collection. Hacker v. Howe, 72 Neb. 385, 101 N.W. 255 (1904).

Statute providing for foreclosure of tax lien on land for payment of delinquent taxes by proceeding in district court with notice by publication sufficiently answers the demand of due process of law. Woodrough v. Douglas County, 71 Neb. 354, 98 N.W. 1092 (1904).

The power of the state to levy taxes obviously carries with it the power to collect them and to provide all means necessary or appropriate to insure and enforce their collection. Leigh v. Green, 64 Neb. 533, 90 N.W. 255 (1902).

**11. Laws held generally to violate due process**

Rural Cemetery District Act violated this provision of the Constitution. Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535 (1961).

Weather Control Act of 1957 violated this section. Summerville v. North Platte Valley Weather Control Dist., 170 Neb. 46, 101 N.W.2d 748 (1960).

Fair Trade Act violated due process clause. McGraw Electric Co. v. Lewis & Smith Drug Co., Inc., 159 Neb. 703, 68 N.W.2d 608 (1955).

**12. Laws held generally not to violate due process**

This section was not violated in adoption of L.B. 425 (Laws 1967) amending section 14-1041 and creating section 14-1042, R.R.S.1943. Evans v. Metropolitan Utilities Dist., 187 Neb. 261, 188 N.W.2d 851 (1971).

Statutes relating to annexation of urban and suburban land by first-class cities and providing annexation benefits thereto held constitutional. Plumfield Nurseries, Inc. v. Dodge County, 184 Neb. 346, 167 N.W.2d 560 (1969).

Airport Authority Act did not violate this section. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

Statute creating Nebraska Power Review Board did not violate this section. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

Zoning ordinance of city of Omaha did not violate this section. Wolf v. City of Omaha, 177 Neb. 545, 129 N.W.2d 501 (1964).

Statute authorizing paving in city of the second class did not deny due process of law. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

Reorganization of School Districts Act did not violate this section. Nickel v. School Board of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953).

Reclamation Act did not violate this section. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

Unfair Sales Act sustained as constitutional. Hill v. Kusy, 150 Neb. 653, 35 N.W.2d 594 (1949).

Par Check Law sustained as constitutional exercise of police power. Placek v. Edstrom, 148 Neb. 79, 26 N.W.2d 489 (1947).

Statute prohibiting trial of divorce suit until six months after service of summons does not violate due process of law. Garrett v. State, 118 Neb. 373, 224 N.W. 860 (1929).

Employees liability act does not violate the constitutional guaranty that no person shall be deprived of property without due process of law. United States Fidelity and Guaranty Co. v. Wickline, 103 Neb. 21, 170 N.W. 193 (1918).

Innkeepers' act providing for night watchman to protect guest from fire does not contravene the Constitution in that it deprives the innkeeper of life, liberty and property without due process of law. Strahl v. Miller, 97 Neb. 820, 151 N.W. 952 (1915), Ann. Cas. 1917A 141 (1915).

Bulk sales law does not violate provision of taking property without due process of law. Appel Mercantile Co. v. Barker, 92 Neb. 669, 138 N.W. 1133 (1912).

**13. Miscellaneous**

Constitutionality of legislative act as being in violation of this section raised but not decided, as act was in violation of another section of the Constitution. Williams v. County of Buffalo, 181 Neb. 233, 147 N.W.2d 776 (1967).

Constitutionality of Municipal Ground Water Act raised, but not decided. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

Claim of deprivation of property without due process of law under labor relations ordinance was raised but not decided. Midwest Employers Council, Inc. v. City of Omaha, 177 Neb. 877, 131 N.W.2d 609 (1964).

Unconstitutionality of tax statute under this section raised but not decided. Creigh v. Larsen, 171 Neb. 317, 106 N.W.2d 187 (1960).

Issue of double taxation of motor vehicles raised but not decided. Peterson v. Hancock, 166 Neb. 637, 90 N.W.2d 298 (1958).

Effect of instruction as denial of due process raised but not decided. Liakas v. State, 161 Neb. 130, 72 N.W.2d 677 (1955).

Constitutionality of statute authorizing service by publication raised but not decided. Johnson v. Richards, 155 Neb. 552, 52 N.W.2d 737 (1952).

**I-4. Religious freedom.**

All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious beliefs; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

**Source:**Neb. Const. art. I, sec. 4 (1875).

**Annotation**

**1. Religious freedom**
**2. Schools**
**3. Miscellaneous**

**1. Religious freedom**

A public exhibition of religious worship, in the form of a seance for gain on stage or at show, is not a religious liberty guaranteed by Constitution. Dill v. Hamilton, 137 Neb. 723, 291 N.W. 62 (1940).

Restricting term "Religious purpose" to church organization is a transgression of the constitutional inhibition made by this section. Ancient & Accepted Scottish Rite v. Board of County Commissioners, 122 Neb. 586, 241 N.W. 93 (1932), overruled Scottish Rite Bldg. Co. v. Lancaster County, 106 Neb. 95, 182 N.W. 574 (1921), and Mt. Moriah Lodge, A.F. & A.M. v. Otoe County, 101 Neb. 274, 162 N.W. 639 (1917).

Holding Sunday School or religious meetings in a country schoolhouse so infrequently as not to exceed four times a year, and which does not interfere with the school work, does not constitute a place of worship within the meaning of this section. State ex rel. Gilbert v. Dilley, 95 Neb. 527, 145 N.W. 999 (1914).

Courts will not refuse to protect property rights because they may thereby interfere with religious convictions of some individual or group. Constitution contemplates courts may be called upon to protect religious denominations in peaceable enjoyment of own form of worship. Parish of the Immaculate Conception v. Murphy, 89 Neb. 524, 131 N.W. 946 (1911).

**2. Schools**

The Nebraska Supreme Court interprets the paucity of standards in the free instruction clause as the framers' intent to commit the determination of adequate school funding solely to the Legislature's discretion, greater resources, and expertise. Nebraska Coalition for Ed. Equity v. Heineman, 273 Neb. 531, 731 N.W.2d 164 (2007).

The plain language of the religious freedom clause textually commits to the Legislature the duty to encourage schools. Nebraska Coalition for Ed. Equity v. Heineman, 273 Neb. 531, 731

N.W.2d 164 (2007).

There are no qualitative, constitutional standards for public schools that the Nebraska Supreme Court could enforce, apart from the requirements that the education in public schools must be free and available to all children. Nebraska Coalition for Ed. Equity v. Heineman, 273 Neb. 531, 731 N.W.2d 164 (2007).

Right to religious freedom was not denied by requirement that all schools be taught by qualified teacher. Meyerkorth v. State, 173 Neb. 889, 115 N.W.2d 585 (1962).

Use of state funds to support a school maintained by religious denomination is in violation of this section. State ex rel. Public Sch. Dist. No. 6 of Cedar County v. Taylor, 122 Neb. 454, 240 N.W. 573 (1932).

Reading in public schools of passages from the Bible, singing of hymns, and offering prayer, in accordance with the doctrines of sectarian churches, is forbidden by the Constitution. State ex rel. Freeman v. Scheve, 65 Neb. 853, 91 N.W. 846 (1902), judgment adhered to 65 Neb. 876, 93 N.W. 169 (1903).

**3. Miscellaneous**

Legislature cannot authorize donations by public corporations for religious purposes. United Community Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

## I-5. Freedom of speech and press.

Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth when published with good motives, and for justifiable ends, shall be a sufficient defense.

**Source:**Neb. Const. art. I, sec. 5 (1875).

### Annotation



**1. Freedom of speech**

Because the question of whether an initiative measure should appear on the ballot is determined solely by a state's constitution, the resubmission clause does not restrict the right to political association. State ex rel. Lemon v. Gale, 272 Neb. 295, 721 N.W.2d 347 (2006).

The resubmission clause of Neb. Const. art. III, sec. 2, is a limitation on the initiative process itself, but does not restrict speech or expression because it does not regulate the process of advocacy by dictating who can speak or how they must go about speaking. State ex rel. Lemon v. Gale, 272 Neb. 295, 721 N.W.2d 347 (2006).

A legislative act with an effective date prior to the date a referendum election on the act can be held does not violate the constitutional right to free speech, based on the fact that Nebraska's

referendum provisions make it difficult for sponsors to repeal the act and even more difficult to suspend its operation. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

State restrictions on initiative and referendum rights violate the guarantee of free speech when they significantly inhibit communication with voters about proposed political change and are not warranted by the state interests (administrative efficiency, fraud detection, and informing voters) alleged to justify those restrictions. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

The parameters of the constitutional right to freedom of speech are the same under both the federal and the state Constitutions. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

The parameters of the constitutional right to freedom of speech are the same under this provision and the U.S. Constitution. State v. Hookstra, 263 Neb. 116, 638 N.W.2d 829 (2002).

A content-neutral nude dancing ordinance satisfies the constitutional guarantee of freedom of speech when the ordinance (1) is within the power of the government to enact, (2) reasonably furthers a substantial government interest, (3) is unrelated to the suppression of free expression, and (4) imposes a restriction that is no greater than is essential to the furtherance of the substantial government interest. Village of Winslow v. Sheets, 261 Neb. 203, 622 N.W.2d 595 (2001).

The parameters of the constitutional right to freedom of speech are the same under the Nebraska and U.S. Constitutions. Village of Winslow v. Sheets, 261 Neb. 203, 622 N.W.2d 595 (2001).

The free speech provision of the Nebraska Constitution does not guarantee a picketer or a protester an audience, it only guarantees a reasonable opportunity to speak. Hartford v. Womens Services, P.C., 239 Neb. 540, 477 N.W.2d 161 (1991).

A prior restraint on speech is not per se unconstitutional, but there is a heavy presumption against its constitutional validity. To be lawful, a prior restraint on speech must fit within one of the narrowly defined exceptions to the prohibition against prior restraints. Content-based restrictions on commercial speech are permissible. Commercial speech is speech related solely to the economic interests of the speaker and the audience, or speech which does no more than propose a commercial transaction. Speech intended to exercise a coercive impact is not removed from the reach of the first amendment. J. Q. Office Equip. v. Sullivan, 230 Neb. 397, 432 N.W.2d 211 (1988).

As used in section 28-729, "resist" is not unconstitutionally vague, and use of "fighting words" to constitute "abuse" depends upon the circumstances under which used. State v. Boss, 195 Neb. 467, 238 N.W.2d 639 (1976).

**2. Freedom of the press**

Obscenity is not within the protection of freedom of the press. State v. Pocras, 166 Neb. 642, 90 N.W.2d 263 (1958).

The freedom implies the publisher's respect for the constitutional rights of others, including the

rights of litigants to appear before an independent, impartial court uninfluenced or unembarrassed by contemptuous publications pending litigation. State v. Lovell, 117 Neb. 710, 222 N.W. 625 (1929).

The publication of political matter in a newspaper cannot be enjoined merely because it is false or misleading, such relief being forbidden by this section of the Constitution. Howell v. Bee Pub. Co., 100 Neb. 39, 158 N.W. 358 (1916).

Constitution does not protect any person from punishment for contempt of court for publishing a newspaper article commenting upon a pending cause or proceeding when the publication is calculated to hinder, obstruct, or impede the due administration of justice. Rosewater v. State, 47 Neb. 630, 66 N.W. 640 (1896).

**3. Truth**

When a publication is made by a chief officer of a fraternal insurance association, addressed to the members of the association, concerning a subject matter which affects the general welfare of the association, such communication, although containing words which are libelous per se, is qualifiedly privileged, and is a complete defense unless it is shown by plaintiff by a preponderance of the evidence that the publication was made with express malice. Peterson v. Cleaver, 105 Neb. 438, 181 N.W. 187 (1920).

Where the purpose of members of village board in signing notice to hotel keeper was to do away with bawdy house, rather than to injure plaintiff, it was with good motives, and for justifiable ends. Deupree v. Thorton, 98 Neb. 804, 154 N.W. 557 (1915).

Truth alone is not a defense in action for libel unless with good motives and for justifiable ends. Wertz v. Sprecher, 82 Neb. 834, 118 N.W. 1071 (1908); Neilson v. Jensen, 56 Neb. 430, 76 N.W. 866 (1898); Pokrok Zapadu Pub. Co. v. Zizkovsky, 42 Neb. 64, 60 N.W. 358 (1894).

In a criminal prosecution for publishing an alleged libelous article, the truth of the article, when established, is a perfect defense. Razee v. State, 73 Neb. 732, 103 N.W. 438 (1905), but see Wertz v. Sprecher, 82 Neb. 834, 118 N.W. 1071 (1908).

**4. Miscellaneous**

The protections of sections 5 and 7 of this article intertwine when films are the "things" seized. State v. Skolnik, 218 Neb. 667, 358 N.W.2d 497 (1984).

Statute providing it shall be unlawful just to be in place where controlled substance is being used illegally is unconstitutionally vague and overbroad. State v. Adkins and Sutherland, 196 Neb. 76, 241 N.W.2d 655 (1976).

Statute providing that candidates for judicial and educational offices should not be nominated, indorsed, recommended, censured, criticized or referred to in any manner by any political convention, or primary, or at any primary election is a violation of this section. State ex rel. Ragan v. Junkin, 85 Neb. 1, 122 N.W. 473 (1909).

City ordinance prohibiting distribution of handbills or circulars upon public streets, does not violate this section. In re Anderson, 69 Neb. 686, 96 N.W. 149 (1903).

**I-6. Trial by jury.**

The right of trial by jury shall remain inviolate, but the Legislature may authorize trial by a jury of a less number than twelve in courts inferior to the District Court, and may by general law authorize a verdict in civil cases in any court by not less than five-sixths of the jury.

**Source:**Neb. Const. art. I, sec. 6 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 1.

**Annotation**

**1. Meaning and effect**
**2. Waiver**
**3. Entitled to jury trial**
**4. Not entitled as matter of right**
**5. Miscellaneous**

**1. Meaning and effect**

The purpose of this provision is to preserve the right to a jury trial as it existed at common law and under statutes in force when the Nebraska Constitution was adopted in 1875. The essential character of a cause of action and the remedy or relief it seeks as shown by the allegations of the petition determine whether a particular action is one at law to be tried to a jury or in equity to be tried to a court. State ex rel. Cherry v. Burns, 258 Neb. 216, 602 N.W.2d 477 (1999).

Right to jury trial not abridged by mandatory review of medical claim under Nebraska Hospital-Medical Liability Act. Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).

The court may require that a motion to waive a jury trial be made or filed within a reasonable time prior to trial as a condition to the consent of the court. State v. Godfrey, 182 Neb. 451, 155 N.W.2d 438 (1968).

Determination of sentence to be imposed by court instead of jury does not violate this section. Poppe v. State, 155 Neb. 527, 52 N.W.2d 422 (1952).

Constitution merely preserves right of jury trial as it existed at common law and under statutes in force when Constitution was adopted. One charged with drunken driving under city ordinance is not entitled to jury trial in absence of statute. State v. Hauser, 137 Neb. 138, 288 N.W. 518 (1939).

Constitutional provision does not extend right to jury trial beyond the limits existing at time of adoption of Constitution; jury trial is not a constitutional right in proceeding for appointment or removal of guardian. In re Guardianship of Warner, 137 Neb. 25, 288 N.W. 39 (1939).

The right of trial by jury is a right not extended by the Constitution but one preserved. In an equity case the court may, but is not bound to, give a jury trial. Omaha Fire Insurance Co. v. Thompson, 50 Neb. 580, 70 N.W. 30 (1897).

An action upon a contract for the payment of money only, unencumbered by any collateral agreements, contracts or securities whatever, is a legal action and the issue of fact is triable to a jury. Kuhl v. Pierce County, 44 Neb. 584, 62 N.W. 1066 (1895).

Where a petition states a cause of action for equitable relief and prays for equitable relief, a jury cannot be demanded as a matter of right for the trial of any issue arising in the case. Sharmer v. McIntosh and Johnson, 43 Neb. 509, 61 N.W. 727 (1895).

**2. Waiver**

Right to a trial by jury may be waived by defendant in criminal case. State v. Carpenter, 181 Neb. 639, 150 N.W.2d 129 (1967).

In a civil action, right of trial by jury may be waived. McKinney v. County of Cass, 180 Neb. 685, 144 N.W.2d 416 (1966); Davis v. Snyder 45 Neb. 415, 63 N.W. 789 (1895).

Right to trial by jury may be waived. Johnson v. State, 169 Neb. 783, 100 N.W.2d 844 (1960).

Party who invoked special proceeding could not question constitutionality thereof under this section. Lackaff v. Department of Roads & Irrigation, 153 Neb. 217, 43 N.W.2d 576 (1950).

A plea of guilty waived defendant's right to be served with copy of accusation, time in which to examine the charge and prepare his defense, and waived all other preliminary steps. In re Application of Rice, Rice v. Olson, 144 Neb. 547, 14 N.W.2d 850 (1944), reversed in 324 U.S. 786 (1945).

A request by both parties for direction of a verdict amounts to a waiver of a jury. In re Bose's Estate, 136 Neb. 156, 285 N.W. 319 (1939).

Right to trial by jury in civil case is mere personal privilege which the litigant may waive. Berg v. Griffiths, 126 Neb. 235, 252 N.W. 918 (1934)

In felony case, where prisoner waived jury and trial had to court the judgment and sentence is void. Michaelson v. Beemer, 72 Neb. 761, 101 N.W. 1007 (1904); Arnold v. State, 38 Neb. 752, 57 N.W. 378 (1894).

**3. Entitled to jury trial**

Cited in determining that material issues of fact in contested garnishment proceedings are triable to jury. Christiansen v. Moore, 184 Neb. 818, 172 N.W.2d 620 (1969).

It is a part of our fundamental law that the right of trial by jury shall remain inviolate. Fugate v. Skate, 169 Neb. 420, 99 N.W.2d 868 (1959).

Value of an attorney's services is ordinarily a jury question. Neighbors & Danielson v. West Nebraska Methodist Hospital, 162 Neb. 816, 77 N.W.2d 667 (1956).

Right of trial by jury is not denied to defendant charged with being the father of a child born out of wedlock. In re Application of Rozgall, 147 Neb. 260, 23 N.W.2d 85 (1946).

Cashier of insolvent bank, made party to proceeding to establish preference, is entitled to jury trial. Gering v. Buerstetta, 118 Neb. 54, 223 N.W. 625 (1929).

In proceeding to revive dormant judgment, where payment or satisfaction is pleaded, it is error for the court to deny a request for a trial by jury. Farak v. First Nat. Bank of Schuyler, 67 Neb.

463, 93 N.W. 682 (1903); McCormick & Brother v. Carey, 62 Neb. 494, 87 N.W. 172 (1901).

Clause in fire insurance policy providing that no action shall be brought thereon after breach but all differences settled by arbitration is void, as tending to oust the courts of the jurisdiction. Phoenix Ins. Co. v. Zlotky, 66 Neb. 584, 92 N.W. 736 (1902); Hartford Fire Ins. Co. v. Hon, 66 Neb. 555, 92 N.W. 746 (1902).

In action for money judgment for breach of contract, though equitable in nature, the issue should be submitted to a jury if demand is made for one. Lett v. Hammond, 59 Neb. 339, 80 N.W. 1042 (1899).

If purpose of action is primarily for recovery of money, though in part equitable in nature, the right to trial by jury exists. Yager v. Exchange Nat. Bank of Hastings, 52 Neb. 321, 72 N.W. 211 (1897); Omaha Fire Ins. Co. v. Thompson, 50 Neb. 580, 70 N.W. 30 (1897).

In garnishment proceedings, if the garnishee makes legal or equitable claim to the funds he is entitled to trial by jury. Clark v. Foxworthy, 14 Neb. 241, 15 N.W. 342 (1883).

**4. Not entitled as matter of right**

Notwithstanding constitutional mandates regarding a jury trial, there is no constitutional right to trial by jury for petty offenses carrying a maximum sentence of imprisonment of 6 months or less. State v. Kennedy, 224 Neb. 164, 396 N.W.2d 722 (1986).

It is within the power of the Legislature to provide that the trial of petty offenses in violation of a city or village ordinance shall be triable without a jury. State v. Johnson, 191 Neb. 535, 216 N.W.2d 517 (1974).

Right to jury trial not given in school district reorganization appeal. Schroeder v. Oeltjen, 184 Neb. 8, 165 N.W.2d 81 (1969).

Trial without a jury for violation of city or village ordinance is not a violation of this section. State v. Lookabill, 176 Neb. 254, 125 N.W.2d 695 (1964).

Legislature may authorize trial of petty offenses without a jury for violation of city or village ordinance. State v. Amick, 173 Neb. 770, 114 N.W.2d 893 (1962).

Election contest is a summary action and is not a suit in which a trial by jury is guaranteed under the Constitution. McMaster v. Wilkinson, 145 Neb. 39, 15 N.W.2d 348 (1944).

Action to quiet title to real estate, acquired by accretion, is tried as an equitable action, without a jury. Frank v. Smith, 138 Neb. 382, 293 N.W. 329 (1940).

Enjoining defendants from betting on horse races in their places of business is an equitable remedy to prevent a nuisance and not a proceeding to punish defendants, and does not violate constitutional guarantee of jury trial. State ex rel. Hunter v. The Araho, 137 Neb. 389, 289 N.W. 545 (1940).

Cases arising under Workmen's Compensation Act may be tried and determined as a suit in equity, and it is not in violation of Constitution not to provide for jury. Nosky v. Farmers Union

Cooperative Assn., 109 Neb. 489, 191 N.W. 846 (1922).

This section has no application to judicial proceedings concerning the amount or legality of special assessments for benefits to highways within a drainage district. Drainage Dist. No. 1, Richardson County v. Richardson County, 86 Neb. 355, 125 N.W. 796 (1910).

On a motion for a deficiency judgment in the foreclosure of a real estate mortgage, the mortgagors are not entitled to a trial by a jury. Daniels v. Mutual Benefit Life Insurance Company, 73 Neb. 257, 102 N.W. 458 (1905).

Action by county, to foreclose tax lien, is a suit in equity and there is no constitutional right of a trial by jury. Woodrough v. Douglas County, 71 Neb. 354, 98 N.W. 1092 (1904).

Quo warranto and injunction to exclude a corporation from the privilege of doing business in this state does not require a trial by jury. State v. Standard Oil Co., 61 Neb. 28, 84 N.W. 413 (1900).

In quo warranto proceedings against a public officer, a jury trial cannot be demanded as a matter of right. State ex rel. Broatch v. Moores, 56 Neb. 1, 76 N.W. 530 (1898).

The accused is not entitled to jury trial in prosecution under city ordinance. Liberman v. State, 26 Neb. 464, 42 N.W. 419 (1889).

An action to foreclose mechanic's lien is essentially a suit in equity, and a party is not as a matter of right entitled to a jury therein. Dohle v. Omaha Foundry & Machine Co., 15 Neb. 436, 19 N.W. 644 (1884).

Contempt proceeding is solely to protect public justice from obstruction and the accused is not entitled to trial by jury. Gandy v. State, 13 Neb. 445, 14 N.W. 143 (1882).

**5. Miscellaneous**

The right of trial by jury hereunder does not apply to second offense drunk driving because that is a misdemeanor, not recognized by the common law or any statute in existence when the Constitution was adopted. State v. Young, 194 Neb. 544, 234 N.W.2d 196 (1975).

Denial of request for a separate trial of defendant in a criminal case did not violate this section. State v. Adams, 181 Neb. 75, 147 N.W.2d 144 (1966).

Verdict in civil case by five-sixths of jury was authorized. Cartwright & Wilson Constr. Co. v. Smith, 155 Neb. 431, 52 N.W.2d 274 (1952).

Right of jury trial is not denied where adverse claims are presented and tried in mortgage foreclosure proceeding. Lincoln Joint Stock Land Bank v. Barnes, 143 Neb. 58, 8 N.W.2d 545 (1943).

Where defendant is charged with a felony, it is prejudicial error for court, without notice to and in absence of defendant and his counsel, to instruct jury orally while it is deliberating upon its verdict. Strasheim v. State, 138 Neb. 651, 294 N.W. 433 (1940).

Where cause of action is reversed and remanded, both parties are entitled to a retrial of the cause generally and it is error for trial court to enter judgment for a certain amount though Supreme Court had indicated that aggrieved party was entitled to damages. Parish v. County Fire Ins. Co., 137 Neb. 385, 289 N.W. 765 (1940).

A judgment notwithstanding the verdict can only be entered when the pleadings of the party in whose favor verdict was rendered confess facts entitling other party to judgment. Wolfinger v. Shaw, 136 Neb. 604, 287 N.W. 63 (1939).

A verdict so clearly excessive as to induce the belief that it must have been found through passion, prejudice or mistake, will be set aside. Collins v. Hughes & Riddle, 134 Neb. 380, 278 N.W. 888 (1938).

It is error to submit a case to a jury and permit it to speculate with the rights of litigants where no question for the jury is involved. Smith v. Epstein Realty Co., 133 Neb. 842, 277 N.W. 427 (1938).

Function of determining facts must, under the Constitution, be discharged by jury in action for damages for personal injuries. Storm v. Christenson, 130 Neb. 86, 263 N.W. 896 (1936).

Practice of nonsuiting plaintiff at close of opening statements to jury disapproved. Temple v. Cotton Transfer Co., 126 Neb. 287, 253 N.W. 349 (1934).

Statute authorizing city to condemn public utility property, although no jury trial provided, is constitutional. City of Mitchell v. Western Public Service Co., 124 Neb. 248, 246 N.W. 484 (1933).

Statute vesting magistrates and police courts with powers to try liquor violations without jury where penalty within certain limits, does not violate this section. State v. Kacin, 123 Neb. 64, 241 N.W. 785 (1932).

A fair determination of the facts involved in a criminal prosecution adversely to the accused, by a constitutional jury, is a prerequisite to the infliction of punishment. Scott v. State, 121 Neb. 232, 236 N.W. 608 (1931).

Mandamus will not lie to vacate order denying jury trial for liquor offense, in view of adequate remedy by appeal or error. State ex rel. Garton v. Fulton, 118 Neb. 400, 225 N.W. 28 (1929).

Litigant cannot demand jury on issue of adverse possession in suit to quiet title. Krumm v. Pillard, 104 Neb. 335, 177 N.W. 171 (1920).

Legislature may enact a law declaring possession and transportation of intoxicating liquors to be misdemeanors, and providing that violators of the law be tried before magistrates and police courts without a jury, where the penalty does not exceed a fine of one hundred dollars or imprisonment for three months. Bell v. State, 104 Neb. 203, 176 N.W. 544 (1920).

Provision for assessment of $300 against building enjoined as liquor nuisance, if construed as penalty, is unconstitutional as violating owner's right to jury trial. State ex rel. McGuire v. Macfarland, 104 Neb. 42, 175 N.W. 663 (1919).

Every person is guaranteed a fair and impartial trial by an impartial jury, and the obligation to protect these constitutional rights devolves upon the courts, and no court, when called upon to act, can shirk or evade the responsibility cast upon it by law. Wilson v. State, 87 Neb. 638, 128 N.W. 38 (1910).

In a law action a party is entitled to a jury trial as a matter of right. Yeiser v. Broadwell, 80 Neb. 718, 115 N.W. 293 (1908).

Whether or not a right to trial by jury exists must be determined from the object of the action as determined by the averments of the petition, and in case of ambiguity by resort to the prayer. Gandy v. Wiltse, 79 Neb. 280, 112 N.W. 569 (1907).

Where a statute providing for selection of juries is incomplete, it is invalid because its requirements cannot be complied with. State ex rel Mickey v. Reneau, 75 Neb. 1, 106 N.W. 451 (1905).

Provision for jury of less than twelve in inferior courts does not violate this section. Chicago, B. & Q. R. R. Co. v. Headrick, 49 Neb. 286, 68 N.W. 489 (1896); Moise v. Powell, 40 Neb. 671, 59 N.W. 79 (1894).

**I-7. Search and seizure.**

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

**Source:**Neb. Const. art. I, sec. 7 (1875).

**Annotation**

**1. Search warrant**
**2. Evidence**
**3. Waiver of right**
**4. Action by private individual**
**5. Seizure, what constitutes**
**6. Miscellaneous**

**1. Search warrant**

Generally, the factors supporting an officer's reasonable suspicion of illegal drug activity when coupled with a well-trained dog's positive indication of drugs in a vehicle will give the officer probable cause to search the vehicle. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Provisions in warrants allowing no-knock search warrants offend neither U.S. Const. amend. IV nor this provision. State v. Eary, 235 Neb. 254, 454 N.W.2d 685 (1990).

A valid search as incident to an arrest without a warrant necessarily depends on the legality of the arrest itself. State v. Wickline, 232 Neb. 329, 440 N.W.2d 249 (1989).

When a law enforcement officer has knowledge, based on information reasonably trustworthy under the circumstances, which justifies a prudent belief that a suspect has committed a crime, the officer has probable cause to arrest without a warrant. State v. Wickline, 232 Neb. 329, 440 N.W.2d 249 (1989).

A search pursuant to a warrant is presumed valid. If police have acted pursuant to a search warrant, the defendant bears the burden of proof that the search or seizure is unreasonable; but, if police have acted without a search warrant, the State has the burden of proof that the search was conducted under circumstances substantiating the reasonableness of such search or seizure. State v. Vrtiska, 225 Neb. 454, 406 N.W.2d 114 (1987).

Seizure of theater owner's films without a warrant is not justified under this provision in the absence of probable cause and exigent circumstances or some other recognized exception. State v. Skolnik, 218 Neb. 667, 358 N.W.2d 497 (1984).

A warrant to search a house also covers the land around the house and associated outbuildings used by the inhabitants of the house. State v. Vicars, 207 Neb. 325, 299 N.W.2d 421 (1980).

Items not listed on a search warrant but in plain view of officers searching an area described in the warrant for items listed on the warrant may be seized. State v. King, 207 Neb. 270, 298 N.W.2d 168 (1980).

This section not violated where law enforcement officers learning of attempted arson from trespassers inspected premises without entry or search to ascertain that no fire was in progress before obtaining search warrant. State v. Howard, 184 Neb. 274, 167 N.W.2d 80 (1969).

Law permitting search warrant to be issued upon information and belief is not in violation of this section. Watson v. State, 109 Neb. 43, 189 N.W. 620 (1922).

The right to a search warrant is in no instance authorized until a showing, on oath, of probable cause and particular description is given of place or premises to be searched and thing to be seized. Peterson v. State, 64 Neb. 875, 90 N.W. 964 (1902).

A search without a warrant of a readily mobile, unoccupied vehicle in a residential area was justified under the automobile exception to the warrant requirement where police officers had probable cause to believe that the search would uncover evidence of a crime. State v. Sanders, 15 Neb. App. 554, 733 N.W.2d 197 (2007).

An officer does not have probable cause to effectuate an arrest without a warrant where the officer relies upon erroneous information provided from records maintained by Nebraska's Department of Motor Vehicles as the basis for the arrest. State v. Hisey, 15 Neb. App. 100, 723 N.W.2d 99 (2006).

Law enforcement officers may search the entirety of a motor vehicle, including closed compartments and baggage, as a search incident to a lawful arrest. A warrantless search of containers within a motor vehicle is allowed where there exists probable cause to believe that contraband is located in the vehicle. State v. Claus, 8 Neb. App. 430, 594 N.W.2d 685 (1999).

**2. Evidence**

Once a person is lawfully arrested, if the search is within the scope of a search which may be conducted incident to a lawful arrest, then the evidence obtained from the search is properly admitted. State v. Roberts, 261 Neb. 403, 623 N.W.2d 298 (2001).

Evidence obtained pursuant to an arrest by an officer who was without statutory or common-law authority to arrest should be suppressed. State v. Tingle, 239 Neb. 558, 477 N.W.2d 544 (1991).

The eyewitness report of a citizen informant may be self-corroborating; the fact that a citizen voluntarily came forward with information is itself an indicium of reliability. State v. King, 207 Neb. 270, 298 N.W.2d 168 (1980).

Evidence obtained as the result of an illegal arrest without a warrant is inadmissible in a criminal prosecution. State v. O'Kelly, 175 Neb. 798, 124 N.W.2d 211 (1963).

Evidence obtained as the result of an unlawful search is not rendered inadmissible. Haswell v. State, 167 Neb. 169, 92 N.W.2d 161 (1958).

Seizure by officer of property beyond scope and terms of search warrant, is a violation of this section; nevertheless articles seized and information procured may be used as evidence. Billings v. State, 109 Neb. 596, 191 N.W. 721 (1923).

Taking prisoner's shoes while confined in jail and introducing same in evidence against him does not contravene prohibition against unreasonable seizure. Russell v. State, 66 Neb. 497, 92 N.W. 751 (1902).

Trooper's pat-down search, performed for an improper purpose, was unconstitutional, and evidence found was inadmissible. State v. Scovill, 9 Neb. App. 118, 608 N.W.2d 623 (2000).

Trooper's warrantless search of defendant's car, glove box, and items strewn about the scene of a vehicle accident lacked probable cause, and evidence found was inadmissible. State v. Scovill, 9 Neb. App. 118, 608 N.W.2d 623 (2000).

**3. Waiver of right**

The right to be free from search and seizure may be waived by consent of a citizen as long as such consent is given freely and is not the product of a will overborne. State v. Ready, 252 Neb. 816, 565 N.W.2d 728 (1997).

The right to be free from an unreasonable search and seizure may be waived by the consent of the citizen. State v. Graham, 241 Neb. 995, 492 N.W.2d 845 (1992).

The right to be free from unreasonable search and seizure can be waived by the citizen's consent. State v. Dixon, 237 Neb. 630, 467 N.W.2d 397 (1991).

A consensual search by its very definition is circumscribed by the extent of the permission given, as determined by the totality of the circumstances. State v. Rathjen, 16 Neb. App. 799, 751 N.W.2d 668 (2008).

A suspect's general consent to a search of his pickup truck authorized a police officer to search a locked toolbox in the bed of the pickup truck. State v. Rathjen, 16 Neb. App. 799, 751 N.W.2d

668 (2008).

The right under the federal and state Constitutions to be free from an unreasonable search and seizure may be waived by the consent of the citizen. Consent is an exception to the probable cause requirement of the Fourth Amendment; however, a consensual search may not exceed the scope of the consent given. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness, or in other words, what a typical reasonable person would have understood by the exchange between the officer and the suspect. State v. Claus, 8 Neb. App. 430, 594 N.W.2d 685 (1999).

**4. Action by private individual**

The constitutional protection against unreasonable searches and seizures proscribes only governmental action and is inapplicable to searches or seizures effected by private individuals. State v. Dixon, 237 Neb. 630, 467 N.W.2d 397 (1991).

Under both the fourth amendment to the U.S. Constitution and this provision, whether a search by a private person is actually a search by the State depends on whether the private person must be regarded as having acted as an instrument or agent of the State. A private person's status as a state agent in a search is not restricted to a search ordered, requested, or initiated by a state official, but may include a search which is a joint endeavor between a private person and a state official. Some conduct by the police in advancement or inducement of a search by a private person must be proven to make out a joint endeavor. State v. Sardeson, 231 Neb. 586, 437 N.W.2d 473 (1989).

If a search is a joint endeavor involving a private person and a state or government official, the search is subject to the constitutional safeguard against an unreasonable search, prohibited by the fourth amendment to the U.S. Constitution and this provision. State v. Jolitz, 231 Neb. 254, 435 N.W.2d 907 (1989).

**5. Seizure, what constitutes**

Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of this provision. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

A "seizure" of property occurs when there is some meaningful interference with an individual's possessory interests in that property. State v. Dixon, 237 Neb. 630, 467 N.W.2d 397 (1991).

A person is seized by police and thus entitled to challenge the government's action under the Fourth Amendment when the officer, by means of physical force or show of authority, terminates or restrains his or her freedom of movement. Tyler v. Kyler, 15 Neb. App. 939, 739 N.W.2d 463 (2007).

A police officer may make a seizure by a show of authority and without the use of physical force, but there is no seizure without actual submission; otherwise, there is at most an attempted seizure, so far as the Fourth Amendment is concerned. Tyler v. Kyler, 15 Neb. App. 939, 739 N.W.2d 463 (2007).

A citizen is not seized under the Fourth Amendment to the U.S. Constitution and this provision of the Nebraska Constitution when a police-citizen encounter involves no restraint of the

citizen's liberty, but, rather, noncoercive questioning regarding the status of the citizen's operator's license. State v. Hisey, 15 Neb. App. 100, 723 N.W.2d 99 (2006).

A seizure for purposes of this provision requires either a police officer's application of physical force to a suspect or a suspect's submission to an officer's show of authority. State v. Cronin, 2 Neb. App. 368, 509 N.W.2d 673 (1993).

**6. Miscellaneous**

Although of limited usefulness, a court, in determining whether an officer had reasonable, articulable suspicion justifying continued detention of vehicle occupants following a traffic stop, may consider, with other factors, evidence that the occupants exhibited nervousness. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation. But in determining whether the government's intrusion into a motorist's Fourth Amendment interests was reasonable, the question is not whether the officer issued a citation for a traffic violation or whether the State ultimately proved the violation. An officer's stop of a vehicle is objectively reasonable when the officer has probable cause to believe that a traffic violation has occurred. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Evidence that a motorist is returning to his or her home state in a vehicle rented from another state is not inherently indicative of drug trafficking when the officer has no reason to believe the motorist's explanation is untrue, but a court may nonetheless consider this factor when combined with other indicia that drug activity may be occurring, particularly the occupants' contradictory answers regarding their travel purpose and plans or an occupant's previous drug-related convictions. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Factors that would independently be consistent with innocent activities may nonetheless amount to reasonable suspicion to detain a motorist following a traffic stop when considered collectively. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

In determining whether an officer had reasonable, articulable suspicion justifying continued detention of a motorist following a traffic stop, a court can consider, as part of the totality of the circumstances, the officer's knowledge of the motorist's drug-related criminal history. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Reasonable suspicion to detain a motorist following a traffic stop entails some minimal level of objective justification for detention. Reasonable suspicion is something more than an inchoate and unparticularized hunch, but less than the level of suspicion required for probable cause. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis. If an officer has probable cause to stop a violator, the stop is objectively reasonable and any ulterior motivation is irrelevant. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

To detain a motorist for further investigation past the time reasonably necessary to conduct a routine investigation incident to a traffic stop, an officer must have a reasonable, articulable suspicion that the motorist is involved in criminal activity unrelated to the traffic violation.

Reasonable suspicion for further detention must exist after the point that an officer issues a citation. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Whether a police officer has a reasonable suspicion to detain a motorist for further investigation past the time reasonably necessary to conduct a routine investigation incident to a traffic stop based on sufficient articulable facts depends on the totality of the circumstances. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

The exclusionary rule is inapplicable in child protection proceedings. In re Interest of Corey P. et al., 269 Neb. 925, 697 N.W.2d 647 (2005).

In Nebraska, freedom from unreasonable searches and seizures is guaranteed by U.S. Const. amend. IV and Neb. Const. art. I, sec. 7. To determine whether an individual has an interest protected by the Fourth Amendment to the U.S. Constitution and Neb. Const. art. I, sec. 7, one must determine whether an individual has a legitimate or justifiable expectation of privacy in the place subjected to canine scrutiny. Ordinarily, two inquiries are required. First, the individual must have exhibited an actual (subjective) expectation of privacy, and second, the expectation is one that society is prepared to recognize as reasonable. By using a canine to sniff for illegal drugs in a hallway outside an apartment, the police have engaged an investigative technique by which they are able to obtain information regarding the contents of a place that has traditionally been accorded a heightened expectation of privacy, and while such investigative technique may be minimally intrusive, it nevertheless implicates the Fourth Amendment to the U.S. Constitution and Neb. Const. art. I, sec. 7, and requires independent reasonable suspicion. Under the Fourth Amendment to the U.S. Constitution and Neb. Const. art. I, sec. 7, an occupant has a legitimate expectation of some measure of privacy in the hallway immediately outside his or her apartment or at the threshold of his or her home. Given such constitutional protection, before a drug-detecting canine can be deployed to test the threshold of a home, police officers must possess at a minimum reasonable, articulable suspicion that the location to be tested contains illegal drugs. State v. Ortiz, 257 Neb. 784, 600 N.W.2d 805 (1999).

Under this provision, it is reasonable for the police to search the personal effects of a person under lawful arrest as part of the routine procedure incident to booking and jailing the suspect. There is no requirement that such inventory policies be established in writing. State v. Filkin, 242 Neb. 276, 494 N.W.2d 544 (1993).

A defendant is guaranteed the right to be secure in his person, house, papers, and effects, against unreasonable searches and seizures. State v. Houser, 241 Neb. 525, 490 N.W.2d 168 (1992).

No new arrest occurred when correctional authorities allowed police officers to interview a person being held in jail on other charges, and thus there was no constitutional basis to challenge the officers' seizure of the person when he attempted to leave the interviewing room. State v. Green, 240 Neb. 639, 483 N.W.2d 748 (1992).

The test to determine whether an investigative stop is justified is whether the police officer has a reasonable suspicion based on articulable facts which indicate that a crime has occurred, is occurring, or is about to occur and that the suspect may be involved. An officer is not required to wait until a crime has occurred before making an investigatory stop. It is sufficient if there is an objective manifestation that the person stopped is, has been, or is about to be engaged in criminal activity. State v. Rein, 234 Neb. 917, 453 N.W.2d 114 (1990).

Neither the U.S. Constitution nor the Nebraska Constitution prohibits the warrantless search and seizure of garbage left for collection outside the curtilage of the home. State v. Trahan, 229 Neb. 683, 428 N.W.2d 619 (1988).

A person's capacity to claim the protection of this section as to unreasonable searches and seizures, like its counterpart, U.S. Const. amend. IV, depends upon whether the person who claims such protection has a legitimate expectation of privacy in the invaded place. An unreasonable search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. Because the defendants had no reasonable expectation of privacy in the searched premises, they were without standing to claim a violation of U.S. Const. amend. IV in regard to the search of their former residence. State v. Hodge and Carpenter, 225 Neb. 94, 402 N.W.2d 867 (1987).

Seizure of property which is in plain sight in vehicle's completely open trunk while driving on a public thoroughfare is lawful under the plain view doctrine provided there is probable cause to associate the property which is in plain view with criminal activity. State v. Holman, 221 Neb. 730, 380 N.W.2d 304 (1986).

The protections of sections 5 and 7 of this article intertwine when films are the "things" seized. State v. Skolnik, 218 Neb. 667, 358 N.W.2d 497 (1984).

An investigatory stop and search is not constitutionally permissible where the officer has no reasonable suspicion a person is committing, has committed, or is about to commit a crime. State v. Colgrove, 198 Neb. 319, 253 N.W.2d 20 (1977).

Sections 29-3301 to 29-3307 do not violate privilege against self-incrimination, are constitutional, and apply to physical evidence, not to oral communications or testimony. State v. Swayze, 197 Neb. 149, 247 N.W.2d 440 (1976).

In a "stop and frisk" situation, if after a patdown, officers had nothing more than a suspicion that vehicle contained controlled substances they did not have probable cause to arrest occupants or search vehicle. State v. Aden, 196 Neb. 149, 241 N.W.2d 669 (1976).

Statements and admissions by a defendant in proceedings under sexual psychopath law were not obtained in violation of this section. State v. Madary, 178 Neb. 383, 133 N.W.2d 583 (1965).

Statute requiring a warehouseman to furnish tax assessor a list of property stored in warehouse was not violative of this section. United States Cold Storage Corp. v. Stolinski, 168 Neb. 513, 96 N.W.2d 408 (1959).

Filiation proceedings are essentially civil in character. In re Application of Rozgall, 147 Neb. 260, 23 N.W.2d 85 (1946).

A citizen has the right to keep existence of his private papers and effects secret from the world unless required by due process of law to make disclosure. Clarke v. Neb. Nat. Bank, 49 Neb. 800, 69 N.W. 104 (1896).

A condition of the appellant's probation requiring him to submit to warrantless searches

contributed to the rehabilitation process and was reasonable and therefore, constitutional. State v. Colby, 16 Neb. App. 644, 748 N.W.2d 118 (2008).

The fact that the appellant's probation officer was not present during a warrantless probation search of the appellant's person and vehicle did not render the search unreasonable. State v. Colby, 16 Neb. App. 644, 748 N.W.2d 118 (2008).

The failure of an individual to secure his vehicle decreased his expectation of privacy relating to the vehicle. State v. Sanders, 15 Neb. App. 554, 733 N.W.2d 197 (2007).

The continued detention of a citizen by a law enforcement officer for approximately 52 minutes after a traffic stop and while awaiting the arrival of a drug detection dog— detention was based upon a reasonable, articulable suspicion that the citizen was involved in additional criminal activity— reasonable where the investigative methods employed during the detention were reasonable and the scope and intrusiveness of the detention were reasonable. State v. Kehm, 15 Neb. App. 199, 724 N.W.2d 88 (2006).

Under section 84-106, a deputized railroad security officer is constrained by the Fourth Amendment like any sheriff or police officer. State v. Claus, 8 Neb. App. 430, 594 N.W.2d 685 (1999).

Where a police officer had indicated, prior to searching the defendant's person, that he was looking for drugs and weapons, a reasonable person would have believed that consenting to the officer's request to search the vehicle would include the officer's examination of the contents of unlocked closed containers within the vehicle, and thus the defendant's authorization of the officer's search extended to the safety glasses bag lying in plain view on the front seat, in which bag the officer discovered marijuana and methamphetamine. State v. Claus, 8 Neb. App. 430, 594 N.W.2d 685 (1999).

Whether one who consents later objects to an ongoing search is a significant inquiry determining whether there is a limitation placed on the scope of the consent that has been granted. State v. Claus, 8 Neb. App. 430, 594 N.W.2d 685 (1999).

This provision does not foreclose an officer from making observations that lead to a reasonable suspicion of criminal activity during a caretaking encounter. State v. Smith, 4 Neb. App. 219, 540 N.W.2d 375 (1995).

**I-8. Habeas corpus.**

The privilege of the writ of habeas corpus shall not be suspended.

**Source:**Neb. Const. art. I, sec. 8 (1875); Amended 1998, Laws 1997, LR 30CA, sec. 1.

**I-9. Bail; fines; imprisonment; cruel and unusual punishment.**

All persons shall be bailable by sufficient sureties, except for treason, sexual offenses involving penetration by force or against the will of the victim, and murder, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and

unusual punishment inflicted.

**Source:**Neb. Const. art. I, sec. 9 (1875); Amended 1978, Laws 1978, LB 553, sec. 1.

**Annotation**

**1. Bail**
**2. Excessive bail**
**3. Fines and punishment**
**4. Miscellaneous**

**1. Bail**

Pursuant to this provision, not all offenses are bailable offenses. State v. Boppre, 234 Neb. 922, 453 N.W.2d 406 (1990).

Denial of bail on murder charge where proof is evident or presumption great is no basis for claim guilty plea involuntary. State v. Hamilton, 187 Neb. 359, 190 N.W.2d 862 (1971).

One charged with first degree murder has no absolute right to bail. State v. Pilgrim, 182 Neb. 594, 156 N.W.2d 171 (1968).

Throughout state history bail has been provided for and favored. State v. Seaton, 170 Neb. 687, 103 N.W.2d 833 (1960).

A fugitive from justice who is in custody by virtue of a rendition warrant issued by the Governor in an extradition proceeding is not entitled to bail pending appeal. In re Application of Campbell, 147 Neb. 382, 23 N.W.2d 698 (1946).

That all persons shall be "bailable by sufficient sureties" is a rule which should apply to one arrested in a "children born out of wedlock" proceeding, as well as to one charged with a felony or misdemeanor. State v. Noxon, 96 Neb. 843, 148 N.W. 903 (1914).

The use of term "bail" without limitation or qualification would seem to imply a bail as understood at common law before adoption of Constitution, and the court may admit to bail after sentence and pending appeal. Ford v. State, 42 Neb. 418, 60 N.W. 960 (1894).

**2. Excessive bail**

The issue of excessiveness of pretrial bail is not reviewable after a conviction and sentence. State v. Harig, 192 Neb. 49, 218 N.W.2d 884 (1974).

Habitual criminal statute does not contravene provision prohibiting excessive bail. Davis v. O'Grady, 137 Neb. 708, 291 N.W. 82 (1940).

Excessive bail is not whether the amount of bail required is high but rather is the bail demanded per se unreasonable and disproportionate to crime charged in indictment. In re Scott, 38 Neb. 502, 56 N.W. 1009 (1893).

Denying bail to persons charged with certain sexual offenses violates the "excessive bail" clause of the eighth amendment of the U.S. Constitution as incorporated in the fourteenth amendment. Hunt v. Roth, 648 F.2d 1148 (8th Cir. 1981).

**3. Fines and punishment**

Electrocution as an execution method violates the constitutional prohibition against cruel and unusual punishment because it will inflict intolerable pain unnecessary to cause death in enough executions to present a substantial risk that any prisoner will suffer unnecessary and wanton pain in a judicial execution by electrocution. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

In a method of execution challenge, "wanton" means that the method itself is inherently cruel. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

The death penalty, when properly imposed by a state, does not violate either the 8th or the 14th Amendments to the U.S. Constitution or the state Constitution's proscription against inflicting cruel and unusual punishment. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

The prohibition against cruel and unusual punishment in the federal and state Constitutions is a restraint upon the exercise of legislative power. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

The relevant legal standards in deciding whether electrocution is cruel and unusual punishment are whether the State's chosen method of execution (1) presents a substantial risk that a prisoner will suffer unnecessary and wanton pain in an execution, (2) violates the evolving standards of decency that mark a mature society, and (3) minimizes physical violence and mutilation of the prisoner's body. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Whether a method of execution violates the constitutional prohibition against cruel and unusual punishment presents a question of law. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Whether a method of inflicting the death penalty inherently imposes a significant risk of causing pain in an execution is a question of fact. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Whether the Legislature intended to cause pain in selecting a punishment is irrelevant to a constitutional challenge that a statutorily imposed method of punishment violates the prohibition against cruel and unusual punishment. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Section 29-2203 does not violate either the U.S. or Nebraska Constitution. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

The death penalty may deter offenders, is not invariably disproportionate to the severity of the crime of murder, and is not per se cruel and unusual punishment. State v. Simants, 197 Neb. 549, 250 N.W.2d 881 (1977); State v. Rust, 197 Neb. 528, 250 N.W.2d 867 (1977); State v. Stewart, 197 Neb. 497, 250 N.W.2d 849 (1977).

Statute providing six months jail sentence plus two-year revocation of motor vehicle operator's license did not violate this section. State v. Tucker, 183 Neb. 577, 162 N.W.2d 774 (1968).

Provision for sterilization of feeble-minded persons as prerequisite to parole or release from state institution is not "cruel and unusual punishment" and is not repugnant to this section of the Constitution. In re Clayton, 120 Neb. 680, 234 N.W. 630 (1931).

Sentence under statute providing for "bread and water" diet for prisoner is not repugnant to this section. State ex rel. Carson v. Smith, 114 Neb. 661, 209 N.W. 330 (1926); State ex rel. Nelson v. Smith, 114 Neb. 653, 209 N.W. 328 (1926).

The return of the property or of the value thereof in embezzlement or larceny cases, in addition to the penal sentence, should not be considered as any part of the punishment as excessive or unusual. Everson v. State, 66 Neb. 154, 92 N.W. 137 (1902).

**4. Miscellaneous**

This constitutional provision does not abridge the Legislature's power to select such punishment as it deems most effective in the suppression of crime, provided the punishment is not grossly disproportionate to the crime. State v. Ruzicka, 218 Neb. 594, 357 N.W.2d 457 (1984).

A constitutional amendment adding first degree sexual assault to offenses for which bail may be denied is constitutional and is not violative of the fourteenth Amendment due process clause of the U.S. Constitution. Parker v. Roth, 202 Neb. 850, 278 N.W.2d 106 (1979).

A sentence under a law not yet operative is null and void. State ex rel. Whitacre v. Smith, 114 Neb. 659, 209 N.W. 332 (1926).

## I-10. Presentment or indictment by grand jury; information.

No person shall be held to answer for a criminal offense, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in case of impeachment, and in cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, unless on a presentment or indictment of a grand jury; *Provided,* That the Legislature may by law provide for holding persons to answer for criminal offenses on information of a public prosecutor; and may by law, abolish, limit, change, amend, or otherwise regulate the grand jury system.

**Source:**Neb. Const. art. I, sec. 10 (1875).

**Annotation**

**1. Not violation of section**
**2. Miscellaneous**

**1. Not violation of section**

Legislative act providing for filiation proceedings is not violative of this section. In re Application of Rozgall, 147 Neb. 260, 23 N.W.2d 85 (1946).

Trial under information by county attorney does not deprive of due process and is in accord with this section. Bolln v. State, 51 Neb. 581, 71 N.W. 444 (1897).

**2. Miscellaneous**

Prosecutions for misdemeanors are exempt from requirement of being brought only on indictment or information. Otte v. State, 172 Neb. 110, 108 N.W.2d 737 (1961).

Permitting prosecutions for felony by information does not conflict with Fourteenth Amendment to Constitution of the United States. Jackson v. Olson, 146 Neb. 885, 22 N.W.2d 124 (1946).

Legislature may provide for prosecution on information instead of indictment. Duggan v. Olson, 146 Neb. 248, 19 N.W.2d 353 (1945).

Where information charging grand larceny was signed by acting county attorney and not county attorney, the error, unless objected to before a plea to the merits, is waived. State ex rel. Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497 (1940).

Assistant attorney general is not authorized to make and sign an information in his own name, and one so signed is a nullity. Lower v. State, 106 Neb. 666, 184 N.W. 174 (1921).

Legislature is not limited to exclusive choice between indictment or information as form of prosecution but may provide for both. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

The proceeding by quo warranto is a civil remedy; it is the means employed by the state to cancel and recall a privilege which the corporation proceeded against has abused. State v. Standard Oil Co., 61 Neb. 28, 84 N.W. 413 (1900).

The filing of information by county attorney is the commencement of the criminal prosecution; filing of complaint before magistrate, in felony or other case which he has no jurisdiction to try, does not arrest running of statute of limitations and is not the beginning of the prosecution by the state. State v. Robertson, 55 Neb. 41, 75 N.W. 37 (1898).

Person appointed by court to act in county attorney's absence is authorized to sign information. Korth v. State, 46 Neb. 631, 65 N.W. 792 (1896).

**I-11. Rights of Accused.**

In all criminal prosecutions the accused shall have the right to appear and defend in person or by counsel, to demand the nature and cause of accusation, and to have a copy thereof; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

**Source:**Neb. Const. art. I, sec. 11 (1875).

**Annotation**

**1. Nature and cause of accusation**
**2. Presence of accused**
**3. Meet witnesses face to face**
**4. Process for witnesses**
**5. Speedy trial**
**6. Impartial jury**
**7. County where offense committed**
**8. Testimony at former trial**
**9. Representation by counsel**
**10. Miscellaneous**

**1. Nature and cause of accusation**

Defendant's right to demand the nature and cause of accusation does not require State to specify upon which aggravating circumstances of section 29-2523(1) the State intends to rely. State v. Palmer, 224 Neb. 282, 399 N.W.2d 706 (1986).

A finding of guilt of an offense included within the charge of a greater offense does not violate this section. State v. McClarity, 180 Neb. 246, 142 N.W.2d 152 (1966).

It is sufficient if the information states the elements of the crime in the language of the statute. State v. Jarrett, 177 Neb. 459, 129 N.W.2d 259 (1964).

Failure to specify section of statute upon which charge in information was based was error without prejudice. State v. Easter, 174 Neb. 412, 118 N.W.2d 515 (1962).

Information attempting to charge disturbing the peace must set out the particular language or conduct on which the offense is predicated. State v. Coomes, 170 Neb. 298, 102 N.W.2d 454 (1960).

An information must inform the accused with such reasonable certainty of the charge against him that he may prepare his defense and plead the judgment as a bar to a later prosecution for the same offense. May v. State, 153 Neb. 369, 44 N.W.2d 636 (1950).

In prosecution for criminal trespass, complaint must describe locus definitely enough to notify defendant of charge against him. Kissinger v. State, 123 Neb. 856, 244 N.W. 794 (1932).

Embezzlement information must charge particular property with sufficient certainty to apprise defendant of facts relied upon for conviction. Davis v. State, 118 Neb. 828, 226 N.W. 449 (1929).

Amendment of information for larceny of sum of money, during trial, by inserting count for larceny of cream checks, violates constitutional rights of defendant. Stowe v. State, 117 Neb. 440, 220 N.W. 826 (1928).

Law abrogating distinction between principal and accessory does not violate constitutional right to demand nature and cause of accusation. State v. Girt, 115 Neb. 833, 215 N.W. 125 (1927); Scharman v. State, 115 Neb. 109, 211 N.W. 613 (1926).

Information need not negative statutory exceptions. Fitch v. State, 102 Neb. 361, 167 N.W. 417 (1918).

Object of information is to inform accused of precise offense for which he must answer. Moline v. State, 67 Neb. 164, 93 N.W. 228 (1903).

A person may not be informed against for one crime and convicted of another and different one. In re McVey, 50 Neb. 481, 70 N.W. 51 (1897).

**2. Presence of accused**

Accused has right to appear and defend in person. State v. Beasley, 183 Neb. 681, 163 N.W.2d 783 (1969).

In trial for manslaughter where trial court orally instructs jury while it is deliberating upon its verdict, in absence of and without notice to defendant or his counsel, such action is violation of constitutional rights of the accused. Strasheim v. State, 138 Neb. 651, 294 N.W. 433 (1940).

Accused cannot as a matter of right insist upon being present at time of filing, arguing or ruling upon motion for new trial. Davis v. State, 51 Neb. 301, 70 N.W. 984 (1897).

Accused cannot as a matter of right insist upon being present at time of interlocutory proceedings prior to the selection of the jury. Miller v. State, 29 Neb. 437, 45 N.W. 451 (1890).

Taking of testimony during voluntary and temporary absence of accused does not contravene Constitution. Hair v. State, 16 Neb. 601, 21 N.W. 464 (1884).

**3. Meet witnesses face to face**

The analysis of the right to confrontation under this provision is the same as that under the Sixth Amendment to the U.S. Constitution. State v. Jacob, 242 Neb. 176, 494 N.W.2d 109 (1993).

Both the federal and the state Constitutions guarantee a defendant the right to confront or meet the witnesses against him face to face. Implicit in confrontation is the right to cross-examine all witnesses. A limitation of the right of confrontation can only be necessitated by a showing of a compelling interest and any infringement must be as minimally obtrusive as possible. Record in case did not show a compelling need to protect the child witness from further injury and absent such a showing, the use of closed-circuit television did not withstand constitutional scrutiny. State v. Warford, 223 Neb. 368, 389 N.W.2d 575 (1986).

Question of whether defendant could demand production as witness of inmate in penitentiary raised but not decided. Garcia v. State, 159 Neb. 571, 68 N.W.2d 151 (1955).

Death certificate was not admissible to show cause of death. Vanderheiden v. State, 156 Neb. 735, 57 N.W.2d 761 (1953).

Contempt proceedings based on hindrance to due administration of justice did not violate this section. Cornett v. State, 155 Neb. 766, 53 N.W.2d 747 (1952).

Constitutional right to meet witnesses face to face does not apply to contempt proceedings. State ex rel. Wright v. Barlow, 132 Neb. 166, 271 N.W. 282 (1937).

The guaranty of the Constitution of the right to meet the witnesses against him does not apply in disbarment proceedings in which depositions were taken by prosecution, as proceedings are civil, not criminal. State ex rel. Spillman v. Priest, 118 Neb. 47, 223 N.W. 635 (1929).

**4. Process for witnesses**

The accused in a criminal prosecution has a right to compulsory process to compel the attendance of witnesses in his behalf; however, a criminal defendant does not possess an absolute constitutional right to demand the personal attendance of a prisoner witness incarcerated outside the county of the venue of trial. As a result, section 25-1233 does not violate the compulsory process clauses of the U.S. and Nebraska Constitutions. State v. Stott, 243 Neb. 967, 503 N.W.2d 822 (1993).

Refusal to order compulsory process for witness whose testimony was immaterial was not prejudicial error. O'Rourke v. State, 166 Neb. 866, 90 N.W.2d 820 (1958).

Right to compel attendance of witness includes taking of depositions out of the state. Dolen v. State, 148 Neb. 317, 27 N.W.2d 264 (1947).

Constitution is not contravened by overruling of motion for continuance on ground of absence of material witnesses when it appears that witness was without process of court. Fanton v. State, 50 Neb. 351, 69 N.W. 953 (1897).

The county is not liable for defendant's witness costs, where he is indicted for a felony. Hewerkle v. Gage County, 14 Neb. 18, 14 N.W. 549 (1883).

**5. Speedy trial**

The constitutional right to a speedy trial is distinct from the provision for a speedy trial prescribed by the Nebraska speedy trial act. State v. Oldfield, 236 Neb. 433, 461 N.W.2d 554 (1990).

The right to a speedy trial applies only to criminal trials and, thus, does not apply to postconviction actions, which are civil in nature. State v. Bostwick, 233 Neb. 57, 443 N.W.2d 885 (1989).

If a trial court relies upon section 29-1207 (4)(f), R.R.S.1943, in excluding a period of delay from the six-month computation, a general finding of "good cause" will not suffice; there must be specific findings as to the good cause. State v. Kinstler, 207 Neb. 386, 299 N.W.2d 182 (1980).

It may be reasonably argued that the exclusionary period set forth in section 29-1207(4), R.R.S.1943, would cover the period from a defendant's commitment as a sexual sociopath to the court's opinion in State v. Shaw, 202 Neb. 766, 277 N.W.2d 106 (1979) or the Legislature's enactment of sections 29-2911 to 29-2921, R.R.S.1943. However, since this defendant was not brought to trial within six months of either date, the issue of when to begin computing the time will not be decided here. State v. Kinstler, 207 Neb. 386, 299 N.W.2d 182 (1980).

Trial within six months of date information filed was "speedy public trial" under this section. State v. Costello, 199 Neb. 43, 256 N.W.2d 97 (1977).

In all criminal proceedings, accused is entitled to have a speedy public trial. State v. Bruns, 181 Neb. 67, 146 N.W.2d 786 (1966).

Period of time within which retrial must be had after a mistrial rests in the sound discretion of the trial court. State v. Fromkin, 174 Neb. 849, 120 N.W.2d 25 (1963).

Preliminary proceedings before magistrate in filiation proceedings are in no sense a trial of the merits. In re Application of Rozgall, 147 Neb. 260, 23 N.W.2d 85 (1946).

Preliminary hearing before a magistrate is not a criminal prosecution or trial within the meaning of this section. Roberts v. State, 145 Neb. 658, 17 N.W.2d 666 (1945).

The question of whether a defendant has had a speedy trial is to be determined by what is fair and reasonable under all the facts and circumstances in each particular case. Maher v. State, 144 Neb. 463, 13 N.W.2d 641 (1944).

Accused must be brought to trial in accordance with Constitution and statutes, or be discharged. Critser v. State, 87 Neb. 727, 127 N.W. 1073 (1910).

The Constitution does not entitle accused to demand to be brought before county judge, as such, and proceed with prosecution. In re Chenoweth, 56 Neb. 688, 77 N.W. 63 (1898).

An appeal based solely on an alleged violation of the constitutional right to a speedy trial can be effectively vindicated in an appeal after judgment. State v. Wilson, 15 Neb. App. 212, 724 N.W.2d 99 (2006).

The denial of a motion for discharge, based upon a constitutional right to a speedy trial and in the absence of a nonfrivolous statutory claim, is interlocutory. State v. Wilson, 15 Neb. App. 212, 724 N.W.2d 99 (2006).

**6. Impartial jury**

This provision provides that the accused in a criminal prosecution shall have the right to "trial by an impartial jury", and article I, section 3, provides that no person shall be deprived of liberty "without due process of law". These provisions are interconnected and require that criminal convictions rest upon a jury determination that a criminal defendant is guilty beyond a reasonable doubt of every element of the crime charged. State v. White, 249 Neb. 381, 543 N.W.2d 725 (1996).

If several juries are picked at one time from a single jury panel for a series of trials, examination must be allowed if requested for good reason in subsequent trials in the series to determine if any jurors should be excused for cause. State v. Myers, 190 Neb. 466, 209 N.W.2d 345 (1973).

Right to trial by jury may be waived by defendant in criminal case. State v. Carpenter, 181 Neb. 639, 150 N.W.2d 129 (1967).

Right to trial by an impartial jury was not violated by bet of juror on result of verdict. Fugate v. State, 169 Neb. 420, 99 N.W.2d 868 (1959).

To safeguard right of fair and impartial trial, Legislature has provided for peremptory challenges and challenges for cause of jurors. Oden v. State, 166 Neb. 729, 90 N.W.2d 356 (1958).

Denial of challenge of jury did not violate this section. Bell v. State, 159 Neb. 474, 67 N.W.2d 762 (1954).

Determination of sentence to be imposed by court instead of jury does not violate this section. Poppe v. State, 155 Neb. 527, 52 N.W.2d 422 (1952).

Disqualification of a juror to serve upon account of having sat as a juror in another trial of an offense arising out of the same incident may be waived. Bufford v. State, 148 Neb. 38, 26 N.W.2d 383 (1947).

Gambling places, being nuisances, may be enjoined in equity, without violating constitutional right of person accused of crime to a jury trial. State ex rel. Hunter v. The Araho, 137 Neb. 389, 289 N.W. 545 (1940).

Legislature may provide for trial of petty offenses without jury, where such offenses were not recognized as crimes when Constitution adopted. State v. Hauser, 137 Neb. 138, 288 N.W. 518 (1939).

Accused was guaranteed a fair trial by an impartial jury, and whether such a jury was obtainable in the jurisdiction must first be decided by the trial court. Kirchman v. State, 122 Neb. 30, 239 N.W. 207 (1931).

After a juror has denied on his voir dire that he has said he believed respondent to be guilty, it may be shown by other witnesses that the juror had made such statement. Trobough v. State, 119 Neb. 128, 227 N.W. 443 (1929).

It is not a violation of constitutional rights to try defendant for misdemeanor before jury of eleven, with his consent. Miller v. State, 116 Neb. 702, 218 N.W. 743 (1928).

When, on the trial of a criminal case, a motion to quash the venire because of alleged disqualifications of its several members is made by defendant and overruled by the court, error cannot be predicated on the ruling in the absence of a voir dire examination showing that the jurors against whom the motion was directed were challenged for cause, and that defendant exercised the peremptory challenges allowed under the statute. Kaufmann v. State, 112 Neb. 718, 200 N.W. 998 (1924).

Defendant waived right to object to disqualification of juror, who was not a resident of the county where offense was committed, by failing to interrogate him as to residence. Marino v. State, 111 Neb. 623, 197 N.W. 396 (1924); Seaton v. State, 109 Neb. 828, 192 N.W. 501 (1923).

Where two or more persons are jointly indicted or informed against for the commission of a single offense and sever in their trials, jurors who sat in trial of one are thereby disqualified to sit in trial of another. Seaton v. State, 106 Neb. 833, 184 N.W. 890 (1921).

Fact that juror has opinion which requires evidence to remove will not disqualify him if he can put aside opinion, and is otherwise qualified in accordance with statute. Whitcomb v. State, 102 Neb. 236, 166 N.W. 553 (1918); Lucas v. State, 75 Neb. 11, 105 N.W. 976 (1905).

**7. County where offense committed**

This provision grants to a criminal defendant the right to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, but does not grant a defendant a constitutional right to be tried in a particular county. State v. Vejvoda, 231 Neb. 668, 438 N.W.2d 461 (1989).

Courts of county where offense is committed have jurisdiction to try accused for crime. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

Defendant has right to be tried in county where the alleged offense was committed. Gates v. State, 160 Neb. 722, 71 N.W.2d 460 (1955).

Where a person in one county procures the commission of a crime in another through the agency of an innocent person, he is subject to prosecution in the county where the acts were done by the agent. Robeen v. State, 144 Neb. 910, 15 N.W.2d 69 (1944).

The constitutional right to a trial before a jury of the county where the offense is alleged to have been committed is a mere personal privilege of the accused which he may waive. Marino v. State, 111 Neb. 623, 197 N.W. 396 (1924); Kennison v. State, 83 Neb. 391, 119 N.W. 768 (1909).

The right to a trial, anywhere or under any conditions, may be waived and in practice is waived when the accused makes a judicial confession of his guilt. The right to jury from the vicinage may be waived by judicial finding of guilt. McCarty v. Hopkins, 61 Neb. 550, 85 N.W. 540 (1901).

The offense of larceny is committed in every county into which stolen goods are carried, and prosecution may be in any such county. Hurlburt v. State, 52 Neb. 428, 72 N.W. 471 (1897).

The constitutional right to a trial before a jury of the county or district where the crime is alleged to have been committed is a mere personal privilege of the accused, and not conferred upon him from any consideration of public policy; that privilege may be waived by accused. State ex rel. Scott v. Crinklaw, 40 Neb. 759, 59 N.W. 370 (1894).

County where crime committed means precise portion of territory or division of state over which court may exercise power in criminal matters, and limited to that from which a jury for the particular term may legally be drawn. Olive v. State, 11 Neb. 1, 7 N.W. 444 (1881).

**8. Testimony at former trial**

Evidence of a witness at former trial may be read at later trial, where witness cannot be found after diligent search. Davis v. State, 171 Neb. 333, 106 N.W.2d 490 (1960).

Testimony of a witness under oath face to face with defendant at preliminary hearing, with opportunity for cross-examination, is admissible upon subsequent trial for same offense where attendance of the witness cannot be had. Jackson v. State, 133 Neb. 786, 277 N.W. 92 (1938).

Testimony at former trial is admissible where witness was cross-examined in open court, if attendance at second trial cannot be procured. Koenigstein v. State, 103 Neb. 580, 173 N.W. 603 (1919).

Where a deceased witness testified upon a former trial of the same party for the same offense, being brought "face to face" with the accused and cross-examined by him, it is competent upon a subsequent trial to prove the testimony of such deceased witness and such proof does not violate this section of Constitution. Hair v. State, 16 Neb. 601, 21 N.W. 464 (1884).

**9. Representation by counsel**

Under this provision of the Nebraska Constitution, a criminal defendant's right to conduct his or her own defense is not violated when the court determines that a defendant competent to stand trial nevertheless suffers from severe mental illness to the point where he or she is not competent to conduct trial proceedings without counsel. State v. Lewis, 280 Neb. 246, 785

N.W.2d 834 (2010).

There is no federal Sixth Amendment constitutional right to effective standby counsel, and there is no right to effective assistance of standby counsel under this provision. State v. Gunther, 278 Neb. 173, 768 N.W.2d 453 (2009).

A criminal defendant who proceeds pro se is held to the same trial standard as if he or she were represented by counsel, and it is not up to the trial court to conduct the defense of a pro se defendant. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

A defendant who elects to represent himself or herself cannot thereafter complain that the quality of his or her own defense amounted to a denial of effective assistance of counsel. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

A knowing and intelligent waiver of the right to counsel can be inferred from a defendant's conduct. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

A waiver of counsel need not be prudent, just knowing and intelligent. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

In order to determine whether a defendant's self-representation rights have been respected, the primary focus must be on whether the defendant had a fair chance to present his or her case in his or her own way. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

In order to waive the constitutional right to counsel, the waiver must be made voluntarily, knowingly, and intelligently. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

The fact that a defendant has had the advice of counsel throughout his or her prosecution is an indication that the defendant's waiver of counsel and election to represent himself or herself was knowing and voluntary. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

A criminal defendant who proceeds pro se is held to the same trial standard as if he or she were represented by counsel. State v. Shepard, 239 Neb. 639, 477 N.W.2d 567 (1991).

An accused is entitled to be represented by counsel at all critical stages of criminal proceedings against him, including sentencing. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

Neither the U.S. nor Nebraska Constitution requires that two attorneys be appointed to represent a criminal defendant in a capital case. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

The exercise of sixth amendment rights to counsel is subject to the necessities of judicial discretion. State v. Ryan, 233 Neb. 74, 444 N.W.2d 610 (1989).

Under both the state and federal Constitutions, a defendant in a criminal trial has a right to represent himself and proceed without counsel if he voluntarily and intelligently elects to do so. State v. Kirby, 198 Neb. 646, 254 N.W.2d 424 (1977).

The right to counsel does not apply as a matter of absolute right to a lineup or showup by the police previous to the initiation of adversary judicial criminal proceedings. State v. Sanchell,

191 Neb. 505, 216 N.W.2d 504 (1974).

There is no requirement that counsel be furnished accused prior to preliminary hearing. State v. O'Kelly, 175 Neb. 798, 124 N.W.2d 211 (1963).

Accused has right to counsel and opportunity to make due preparation for trial. Stagemeyer v. State, 133 Neb. 9, 273 N.W. 824 (1937).

**10. Miscellaneous**

A witness— testimony is not the result of unconstitutional coercion simply because it is motivated by a legitimate fear of a death sentence. State v. Lotter, 278 Neb. 466, 771 N.W.2d 551 (2009).

Perjury per se is not a ground for collateral attack on a judgment. State v. Lotter, 278 Neb. 466, 771 N.W.2d 551 (2009).

True promises of leniency are not proscribed when made by persons authorized to make them. State v. Lotter, 278 Neb. 466, 771 N.W.2d 551 (2009).

When the reliability of a given witness may be determinative of guilt or innocence, nondisclosure of evidence in the prosecutor— file which is relevant to the witness— credibility violates due process, irrespective of the good faith or bad faith of the prosecution. State v. Lotter, 278 Neb. 466, 771 N.W.2d 551 (2009).

Where the testimony is in any way relevant to a case, the knowing use of perjured testimony by the prosecution deprives a criminal defendant of his or her right to a fair trial. State v. Lotter, 278 Neb. 466, 771 N.W.2d 551 (2009).

A defendant does not have a constitutional right to receive personal instruction from the trial judge on courtroom procedure. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

A defendant may waive his or her rights under this provision through his or her knowing and voluntary absence at trial. State v. Zlomke, 268 Neb. 891, 689 N.W.2d 181 (2004).

In order to sustain a claim of ineffective assistance of counsel as a violation of the Sixth Amendment to the U.S. Constitution and this provision of the Nebraska Constitution, a defendant must show that (1) counsel's performance was deficient and (2) such deficient performance prejudiced the defendant, that is, demonstrate a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different. State v. Buckman, 259 Neb. 924, 613 N.W.2d 463 (2000).

In considering a claim of ineffective assistance of counsel, prejudice should not be presumed for derogatory comments made during final arguments. In considering a claim of ineffective assistance of counsel, prejudice should not be presumed when a tactical decision has been made to concede the elements of a lesser-included offense to avoid a conviction for a greater offense. State v. Hunt, 254 Neb. 865, 580 N.W.2d 110 (1998).

To sustain a claim of ineffective assistance of counsel, the defendant must show that (1) counsel's performance was deficient and (2) such deficient performance prejudiced the

defendant, that is, demonstrate a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different. State v. Boppre, 252 Neb. 935, 567 N.W.2d 149 (1997).

Notwithstanding constitutional mandates regarding a jury trial, there is no constitutional right to trial by jury for petty offenses carrying a maximum sentence of imprisonment of 6 months or less. State v. Kennedy, 224 Neb. 164, 396 N.W.2d 722 (1986).

The failure of the accused to object to the setting of a trial date more than six months after charges were filed did not constitute a waiver of his rights under this section. State v. Kinstler, 207 Neb. 386, 299 N.W.2d 182 (1980).

Jury sentencing is not required in a capital case. Nebraska's procedure of having a three-judge panel impose sentence meets the requirements of this section and of the U.S. Constitution. State v. Anderson and Hochstein, 207 Neb. 51, 296 N.W.2d 440 (1980).

Venue may be proven like any fact, by testimony or by conclusion reached as the only logical inference under the facts. State v. Liberator, 197 Neb. 857, 251 N.W.2d 709 (1977).

Permitting amendment as to date of prior felony alleged in information in habitual criminal charge was not error. State v. Harig, 192 Neb. 49, 218 N.W.2d 884 (1974).

Hearsay testimony of prosecution witness violated this section. State v. Davis, 185 Neb. 433, 176 N.W.2d 657 (1970).

Section of Uniform Reciprocal Enforcement of Support Act sustained as constitutional. State ex rel. Brito v. Warrick, 176 Neb. 211, 125 N.W.2d 545 (1964).

A preliminary hearing before a magistrate is not a criminal prosecution or trial. Wilson v. Solomon, 172 Neb. 616, 111 N.W.2d 372 (1961).

Rights guaranteed under this section are personal privileges which may be waived. Johnson v. State, 169 Neb. 783, 100 N.W.2d 844 (1960); Hawk v. State, 151 Neb. 717, 39 N.W.2d 561 (1949).

A proceeding for contempt is not a criminal prosecution. State ex rel. Beck v. Lush, 168 Neb. 367, 95 N.W.2d 695 (1959).

Preliminary hearing is not a criminal prosecution or trial. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

Rights guaranteed by this section are personal privileges and may be waived by a judicial confession of guilt. Kissinger v. State, 147 Neb. 983, 25 N.W.2d 829 (1947).

A person charged with a crime waives constitutional rights by judicial confession of guilt. In re Application of Tail, Tail v. Olson, 145 Neb. 268, 16 N.W.2d 161 (1944); In re Application of Carper, Tesar v. Bowley, 144 Neb. 623, 14 N.W.2d 225 (1944).

Habitual criminal law, defining habitual criminal and providing punishment therefor, is not

violative of this section. Rains v. State, 142 Neb. 284, 5 N.W.2d 887 (1942).

Rights may be waived by a judicial confession of guilt. Davis v. O'Grady, 137 Neb. 708, 291 N.W. 82 (1940); Alexander v. O'Grady, 137 Neb. 645, 290 N.W. 718 (1940).

Constitutionality of statute forbidding picketing cannot be determined where information on which defendant was convicted was insufficient to charge offense. Dutiel v. State, 135 Neb. 811, 284 N.W. 321 (1939).

Refusal to allow accused to cross-examine state's witness for bias and prejudice violated this section. Flannigan v. State, 124 Neb. 748, 248 N.W. 92 (1933).

Separate causes consolidated and tried simultaneously on stipulation, does not violate this section. Luke v. State, 123 Neb. 101, 242 N.W. 265 (1932).

Magistrates and police courts are vested with jurisdiction to try without jury all violations of liquor act and of all of such ordinances wherein the penalty does not exceed a fine of one hundred dollars or imprisonment for a period of three months. State v. Kacin, 123 Neb. 64, 241 N.W. 785 (1932).

Statute prohibiting granting of new trial if Supreme Court considers no substantial miscarriage of justice has actually occurred, does not justify court in denying new trial where accused's right to fair trial was violated. Scott v. State, 121 Neb. 232, 236 N.W. 608 (1931).

The showing of prior convictions for violating liquor laws, by cross-examining defendant and wife, in prosecution for larceny is a violation of this section. Kleinschmidt v. State, 116 Neb. 577, 218 N.W. 384 (1928).

The Constitution guarantees a fair and impartial trial to every person accused of crime, and that no person shall be compelled in any criminal case to be a witness against himself, nor shall he be deprived of life, liberty or property without due process of law. Coxbill v. State, 115 Neb. 634, 214 N.W. 256 (1927).

Order of court excluding spectators from courtroom is a violation of this section. Rhoades v. State, 102 Neb. 750, 169 N.W. 433 (1918).

No instruction should be given the jury which would impose upon defendant a burden to which he was not legally subject, and the effect of which would be to prevent him from having a fair and impartial trial under the law of the land. Kennison v. State, 80 Neb. 688, 115 N.W. 289 (1908).

Accused cannot waive jury in felony case and sentence is void in trial by court alone. Michaelson v. Beemer, 72 Neb. 761, 101 N.W. 1007 (1904).

The proceeding by quo warranto is a civil remedy; it is the means employed by the state to cancel and recall a privilege which the corporation proceeded against has abused. State v. Standard Oil Co., 61 Neb. 28, 84 N.W. 413 (1900).

In order to sustain a claim of ineffective assistance of counsel as a violation of the Sixth

Amendment to the U.S. Constitution and this provision, a defendant must show that (1) counsel's performance was deficient and (2) such deficient performance prejudiced the defendant, that is, demonstrate a reasonable probability that but for counsel— deficient performance, the result of the proceeding would have been different. State v. Cardona, 10 Neb. App. 815, 639 N.W.2d 653 (2002).

**I-12. Evidence against self; double jeopardy.**

No person shall be compelled, in any criminal case, to give evidence against himself, or be twice put in jeopardy for the same offense.

**Source:**Neb. Const. art. I, sec. 12 (1875).

**Annotation**

**1. Giving evidence against self**
**2. Jeopardy**

**1. Giving evidence against self**

Defendant's statement to television representative was not the type of official questioning to which this section applies. State v. Phelps, 241 Neb. 707, 490 N.W.2d 676 (1992).

A defendant is not required to make a statement of any kind under his constitutional right not to be compelled in any criminal case to be a witness against himself. State v. Houser, 241 Neb. 525, 490 N.W.2d 168 (1992).

A suspect's awareness of all possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived the privilege against self-incrimination. State v. Dixon, 237 Neb. 630, 467 N.W.2d 397 (1991).

In an opening statement for a jury trial, a prosecutor's comment concerning the necessity of the defendant's testimony or an expression concerning the plausibility or credibility of anticipated testimony from a defendant violates an accused's right to remain silent at trial. State v. Pierce, 231 Neb. 966, 439 N.W.2d 435 (1989).

If the State calls a defendant as a witness at a hearing for revocation of the defendant's probation, the defendant's constitutional right to remain silent is not violated, since a revocation of probation is not a stage of prosecuting a defendant on a criminal charge and because the defendant's admission of a probation violation is not necessarily admission of a crime committed by the defendant. State v. Sites, 231 Neb. 624, 437 N.W.2d 166 (1989).

Probation revocation proceedings are not criminal in nature; the privilege against giving evidence against oneself does not arise. State v. Burow, 223 Neb. 867, 394 N.W.2d 665 (1986).

Trial court's determination that defendant's incriminating statements were made in a non-custodial setting was not clearly wrong; thus, police did not violate defendant's constitutional right against self-incrimination. State v. Saylor, 223 Neb. 694, 392 N.W.2d 789 (1986).

Constitutional privilege against self-incrimination invoked by wife in a dissolution action in response to questions by husband regarding extramarital relations with another man. Ritchey v.

Ritchey, 208 Neb. 100, 302 N.W.2d 372 (1981).

Sections 29-3301 to 29-3307 do not violate privilege against self-incrimination, are constitutional, and apply to physical evidence, not to oral communications or testimony. State v. Swayze, 197 Neb. 149, 247 N.W.2d 440 (1976).

In determining whether the testimony of a witness who had pleaded guilty to a similar charge but had not been sentenced, who invoked the privilege on self-incrimination during the cross-examination may be used against the defendant, a distinction must be drawn between cases in which the assertion of the privilege merely precludes inquiry into collateral matters which bear only on the credibility of the witness and those cases in which the assertion of the privilege prevents inquiry into matters about which the witness testified on direct examination. State v. Bittner, 188 Neb. 298, 196 N.W.2d 186 (1972).

In order to deny a claim to the privilege against self-incrimination by a witness, it must be perfectly clear to the judge from a careful consideration of all of the circumstances in the case that the witness is mistaken and that the answer or answers cannot possibly have a tendency to incriminate. State v. Holloway, 187 Neb. 1, 187 N.W.2d 85 (1971).

Photographs taken of defendant without his permission do not violate this section. State v. Blackwell, 184 Neb. 121, 165 N.W.2d 730 (1969).

Constitutional privilege against self-incrimination is restricted to oral testimony, and does not apply to chemical analysis of body fluids. Prucha v. Department of Motor Vehicles, 172 Neb. 415, 110 N.W.2d 75 (1961).

This section does not apply to one charged with contempt of court and one so charged may be required to testify the same as any other competent witness. State ex rel. Wright v. Barlow, 132 Neb. 166, 271 N.W. 282 (1937).

Physician's testimony as to sanity of accused, based on examination without court order or attorney's consent, but without objection at time, is not compelling him to give evidence against self. Wehenkel v. State, 116 Neb. 493, 218 N.W. 137 (1928).

Requiring defendant to answer questions on cross-examination as to previous convictions for misdemeanor violates the provisions of this section. Coxbill v. State, 115 Neb. 634, 214 N.W. 256 (1927).

**2. Jeopardy**

Double jeopardy protects a defendant against cumulative punishments for convictions on the same offense; however, it does not prohibit the State from prosecuting a defendant for multiple offenses in a single prosecution. State v. Humbert, 272 Neb. 428, 722 N.W.2d 71 (2006).

The concept of double jeopardy applies only in successive prosecution cases and does not apply to a single trial where the defendant has been put in jeopardy only once. State v. Furrey, 270 Neb. 965, 708 N.W.2d 654 (2006).

Whether an amended complaint or information constitutes a continuation of a single trial depends on the nature of the amendment. State v. Furrey, 270 Neb. 965, 708 N.W.2d 654

(2006).

An administrative disciplinary proceeding in which a prisoner loses good time does not place him in jeopardy. A conviction and sentence in a criminal prosecution following an administrative disciplinary proceeding do not constitute double jeopardy. State v. Lynch, 248 Neb. 234, 533 N.W.2d 905 (1995).

Second trial after appellate reversal because of procedural error does not place a defendant in double jeopardy where there is sufficient circumstantial evidence to submit case to jury and to convict defendant. State v. Palmer, 224 Neb. 282, 399 N.W.2d 706 (1986).

Prosecution for traffic infraction held to be a criminal offense within the meaning of double jeopardy herein. State v. Knoles, 199 Neb. 211, 256 N.W.2d 873 (1977).

This Article does not preclude successive prosecutions by federal and Nebraska governments. State v. Pope, 190 Neb. 689, 211 N.W.2d 923 (1973).

Successive prosecutions by federal and state governments in the exercise of concurrent jurisdiction over substantially the same offense are not prohibited by this section. State v. Pope, 186 Neb. 489, 184 N.W.2d 395 (1971).

The conviction of a defendant for intoxication does not bar a subsequent prosecution for offense of operating a motor vehicle while under the influence of intoxicating liquor. State v. Eckert, 186 Neb. 134, 181 N.W.2d 264 (1970).

Order of trial court to set aside verdict and order a new trial did not contravene double jeopardy provision of Constitution. State v. Houp, 182 Neb. 298, 154 N.W.2d 465 (1967).

Sexual psychopath law did not place accused who had been previously convicted of sexual offense in double jeopardy. State v. Madary, 178 Neb. 383, 133 N.W.2d 583 (1965).

A proceeding for contempt is not a criminal case. State ex rel. Beck v. Lush, 168 Neb. 367, 95 N.W.2d 695 (1959).

Determination of sentence to be imposed by court instead of jury does not violate this section. Poppe v. State, 155 Neb. 527, 52 N.W.2d 422 (1952).

Where two persons were killed in automobile collision, acquittal on charge of manslaughter for killing one did not bar prosecution for killing of the other. Jeppesen v. State, 154 Neb. 765, 49 N.W.2d 611 (1951).

Where a jury in a criminal case disagrees and is properly discharged, a second trial upon original charge, even though one or more degrees of the offense have been withdrawn, does not violate this section. State v. Hutter, 145 Neb. 798, 18 N.W.2d 203 (1945).

Habitual criminal statute does not contravene this section. Davis v. O'Grady, 137 Neb. 708, 291 N.W. 82 (1940).

Discharge of jury and retrial of defendant does not violate constitutional guaranty under this

section. Shaffer v. State, 123 Neb. 121, 242 N.W. 364 (1932).

Court, after sentence for less than minimum term prescribed by statute had been served, was without power to vacate it and impose greater penalty. Hickman v. Fenton, 120 Neb. 66, 231 N.W. 510 (1930).

Where offense charged in information upon which defendant was previously tried and acquitted was inclusive of the offense for which she is being held for trial, jeopardy attached by virtue of the former trial, and habeas corpus will lie. In re Resler, 115 Neb. 335, 212 N.W. 765 (1927).

Where jury is discharged after deliberating so long that there is no probability of agreeing and the accused held to a further trial, it is without any infringement of this section. Sutter v. State, 105 Neb. 144, 179 N.W. 414 (1920).

If during a trial of a misdemeanor before a magistrate, it appears that defendant should be put upon his trial for a felony and the magistrate orders a new complaint to be filed and proceeds to sit as examining magistrate, finds probable cause and binds accused over to district court to answer to the felony, this is not violation of this section. Larson v. State, 93 Neb. 242, 140 N.W. 176 (1913).

Where one accused of a felony is put upon trial under an information defective upon its face, and after trial begun, information is amended and the trial proceeded with, there being no change in the offense charged, the accused is not thereby placed in jeopardy a second time. McKay v. State, 91 Neb. 281, 135 N.W. 1024 (1912).

If complaint does not contain necessary averments to constitute criminal charge, there is no former jeopardy. Roberts v. State, 82 Neb. 651, 118 N.W. 574 (1908).

Where the same facts constitute two or more offenses, wherein the lesser offense is not necessarily involved in the greater, and when the facts necessary to convict on a second prosecution would not necessarily have convicted on the first, then the first prosecution will not be a bar to the second, although the offenses were both committed at the same time and by the same act. Warren v. State, 79 Neb. 526, 113 N.W. 143 (1907).

Judgment of court having no jurisdiction over subject matter is void and does not constitute a bar to further proceedings on same charge. Peterson v. State, 79 Neb. 132, 112 N.W. 306 (1907).

To constitute former jeopardy it must appear that party was put upon trial before court having jurisdiction, upon indictment or information sufficient in form and substance to sustain conviction and that the jury was impaneled and sworn, and thus charged with his deliverance. Steinkuhler v. State, 77 Neb. 331, 109 N.W. 395 (1906).

Confinement of accused under void or erroneous sentence is not a bar to rendition of legal sentence under verdict. McCormick v. State, 71 Neb. 505, 99 N.W. 237 (1904).

Statute directing the assessment of a fine in double the amount embezzled, in addition to the imprisonment imposed in case of conviction is not open to objection that it inflicts a double penalty. Everson v. State, 66 Neb. 154, 92 N.W. 137 (1902).

The proceeding by quo warranto is a civil remedy; it is the means employed by the state to cancel and recall a privilege which the corporation proceeded against has abused. State v. Standard Oil Co., 61 Neb. 28, 84 N.W. 413 (1900).

By appealing, accused thereby waives right to object to further prosecution on reversal, on ground that he has been once put in jeopardy. McGinn v. State, 46 Neb. 427, 65 N.W. 46 (1895).

The constitutional provision against placing accused twice in jeopardy does not apply to mere civil actions for recovery of penalties. Mitchell v. State, 12 Neb. 538, 11 N.W. 848 (1882).

**I-13. Justice administered without delay; Legislature; authorization to enforce mediation and arbitration.**

All courts shall be open, and every person, for any injury done him or her in his or her lands, goods, person, or reputation, shall have a remedy by due course of law and justice administered without denial or delay, except that the Legislature may provide for the enforcement of mediation, binding arbitration agreements, and other forms of dispute resolution which are entered into voluntarily and which are not revocable other than upon such grounds as exist at law or in equity for the revocation of any contract.

**Source:**Neb. Const. art. I, sec. 13 (1875); Amended 1996, Laws 1995, LR 1CA, sec. 1.

**Annotation**

**1. Not unconstitutional**
**2. Unconstitutional**
**3. Miscellaneous**
**1. Not unconstitutional**
The court's incorporation by reference of the conditions of confinement set forth in a doctor's report did not deny access to the district court. State v. Hayden, 233 Neb. 211, 444 N.W.2d 317 (1989).

The exclusive remedy provided by the Workers' Compensation Act satisfies the due process requirements of Neb. Const. art. I, section 3, as well as the requirements of this provision, that every person shall have a remedy by due course of law for any injury done to him or her. Abbott v. Gould, Inc., 232 Neb. 907, 443 N.W.2d 591 (1989).

Statute allowing drainage district two years from ascertainment of compensation by appraisers, within which to enter upon and appropriate the land, does not violate this section. Drainage Dist. No. 1 of Pawnee County v. Chicago, B. & Q. R. R. Co., 96 Neb. 1, 146 N.W. 1055 (1914).

Ruling of district court refusing to allow plaintiff in divorce to proceed with trial without first complying with order for payment of temporary alimony does not contravene Constitution. Reed v. Reed, 70 Neb. 779, 98 N.W. 73 (1904).

Drainage proceedings do not contravene Constitution, because party aggrieved has right of appeal to courts. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

**2. Unconstitutional**
Section 25-2602 violates this article to the extent that it provides for arbitration of future

disputes. State v. Nebraska Assn. of Pub. Employees, 239 Neb. 653, 477 N.W.2d 577 (1991).

Existence of an emergency does not impair or destroy constitutional limitations, and the mortgage moratorium act is unconstitutional as it contravenes the spirit and terms of this section. First Trust Co. of Lincoln v. Smith, 134 Neb. 84, 277 N.W. 762 (1938); Strehlow v. Krings, 134 Neb. 82, 277 N.W. 784 (1938).

Nonsuiting of plaintiff at close of opening statements to jury violates this section. Temple v. Cotton Transfer Co., 126 Neb. 287, 253 N.W. 349 (1934).

Order of district court in divorce suit, striking out answer of defendant as to dissolution of marriage, and refusing to allow him to defend, except as to the amount of alimony, on account of his failure to comply with order for the payment of temporary alimony, violates the Constitution. McNamara v. McNamara, 86 Neb. 631, 126 N.W. 94 (1910).

County judge cannot require party to pay fees or costs in advance as condition to "performing those services which would be necessary to enable the defendant to press his defense." Douglas County v. Vinsonhaler, 82 Neb. 810, 118 N.W. 1058 (1908).

Dismissal of action by district judge without determination of merits because of fraud or imposition on the court by one of the parties is denial of constitutional rights. Fitch v. Martin, 80 Neb. 60, 113 N.W. 796 (1907).

Statute providing for impaneling of juries which is so incomplete as to render it incapable of accomplishing its purpose, contravenes Constitution and is void. State ex rel. Mickey v. Reneau, 75 Neb. 1, 106 N.W. 451 (1905).

Stipulation in insurance contract which provides that no suit shall be maintained but that all differences shall be adjusted by arbitration is void as contravening this section. Phoenix Ins. Company v. Zlotky, 66 Neb. 584, 92 N.W. 736 (1902); Hartford Fire Ins. Co. v. Hon, 66 Neb. 555, 92 N.W. 746 (1902).

**3. Miscellaneous**

This provision does not create any new rights but is merely a declaration of a general fundamental principle. It is a primary duty of the courts to safeguard this declaration of right and remedy, but where no right or remedy exists under either common law or statute, this constitutional provision creates none. Paulk v. Central Lab. Assocs., 262 Neb. 838, 636 N.W.2d 170 (2001).

This constitutional provision does not provide a remedy for ex parte communications. State v. Lotter, 255 Neb. 456, 586 N.W.2d 591 (1998).

Based on this provision, Nebraska courts have held that predispute arbitration agreements are unenforceable; however, this rule cannot be enforced when it conflicts with the laws of the United States. Dowd v. First Omaha Sec. Corp., 242 Neb. 347, 495 N.W.2d 36 (1993).

Legislature may direct claimant to comply with the Nebraska Hospital-Medical Liability Act prior to exercise of court remedy. Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).

Pursuant to this section, right of member to sue his union is not dependent upon prior exhaustion of administrative remedies. Poppert v. Brotherhood of R.R. Trainmen, 187 Neb. 297, 189 N.W.2d 469 (1971).

Rule of prior cases, that any change in law exempting charitable hospitals from liability should be made by Legislature, was in violation of this section. Myers v. Drozda, 180 Neb. 183, 141 N.W.2d 852 (1966).

This section does not create any new rights but is merely a declaration of a general fundamental principle. Pullen v. Novak, 169 Neb. 211, 99 N.W.2d 16 (1959).

Right of action against charitable institution was not created. Muller v. Nebraska Methodist Hospital, 160 Neb. 279, 70 N.W.2d 86 (1955).

Right to trial without unreasonable and unnecessary delay is guaranteed. Sullivan v. Storz, 156 Neb. 177, 55 N.W.2d 499 (1952).

Party who invoked special proceeding could not question constitutionality thereof under this section. Lackaff v. Department of Roads & Irrigation, 153 Neb. 217, 43 N.W.2d 576 (1950).

Remedy is afforded unaffected by subsequent death of wrongdoer. Rehn v. Bingaman, 151 Neb. 196, 36 N.W.2d 856 (1949).

Litigants are entitled to access to the courts when they have probable cause for believing an injury has been done to their lands, goods, person or reputation. Fender v. Waller, 139 Neb. 612, 298 N.W. 349 (1941).

Damages to land caused by seepage from a reservoir is an injury to land as set out in this section. Applegate v. Platte Valley Public Power & Irr. Dist., 136 Neb. 280, 285 N.W. 585 (1939).

Guest law does not deprive motorist's guest of protection of constitutional provision but merely changes degree of proof essential to recovery. Clarke v. Weatherly, 131 Neb. 816, 270 N.W. 316 (1936); Rogers v. Brown, 129 Neb. 9, 260 N.W. 794 (1935); Howard v. Gerjevic, 128 Neb. 795, 260 N.W. 273 (1935); Gilbert v. Bryant, 125 Neb. 731, 251 N.W. 823 (1933).

Administrator may bring action for damages after death of intestate for pain and suffering inflicted on deceased, by virtue of self-executing provisions of this section. Wilfong v. Omaha & C. B. St. Ry. Co., 129 Neb. 600, 262 N.W. 537 (1935).

The writ of error coram nobis provides a corrective judicial process that the Constitution guarantees shall not be denied. Carlsen v. State, 129 Neb. 84, 261 N.W. 339 (1935).

Contract of employment providing for arbitration of disputes does not deprive employee of right to seek redress in courts. Rentscheler v. Missouri P. R. R. Co., 126 Neb. 493, 253 N.W. 694 (1934).

Provisions of this section are self-executing in their nature and mandatory upon all courts of this state. Burnham v. Bennison, 121 Neb. 291, 236 N.W. 745 (1931).

In a tax foreclosure proceeding by a county to recover delinquent taxes on land without making purchaser at a prior administrative sale a party, the purchaser at the foreclosure sale buys subject to the right of one having a valid lien upon the premises to redeem from such sale, and the one claiming a lien cannot be barred without a hearing. Smith v. Potter, 92 Neb. 39, 137 N.W. 854 (1912).

A mortgagor should not be permitted, in person or by his will, to raise a controversy over the mortgaged property which will delay enforcement of the mortgage in the event of default in payment thereof. Shackley v. Homer, 87 Neb. 146, 127 N.W. 145 (1910).

Where a party has, without fault or neglect on his part or his attorneys', failed to obtain a transcript for a review on error in this court, a new trial will be granted, if necessary, to secure him his constitutional right. Zweibel v. Caldwell, 72 Neb. 47, 99 N.W. 843 (1904).

This section guarantees a remedy only for such as result from an invasion or infringement of a legal right, or the failure to discharge a legal duty or obligation, and is not a guarantee of a remedy for every species of injury in respect of such matters. Goddard v. City of Lincoln, 69 Neb. 594, 96 N.W. 273 (1903).

**I-14. Treason.**

Treason against the state shall consist only in levying war against the state, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

**Source:**Neb. Const. art. I, sec. 14 (1875).

**I-15. Penalties; corruption of blood; transporting out of state prohibited.**

All penalties shall be proportioned to the nature of the offense, and no conviction shall work corruption of blood or forfeiture of estate; nor shall any person be transported out of the state for any offense committed within the state.

**Source:**Neb. Const. art. I, sec. 15 (1875).

**Annotation**

Unconstitutionality of tax statute under this section raised but not decided. Creigh v. Larsen, 171 Neb. 317, 106 N.W.2d 187 (1960).

Permitting recovery of money paid on void contract was not the imposition of a penalty within the meaning of this section. Arthur v. Trindel, 168 Neb. 429, 96 N.W.2d 208 (1959).

Conviction of felony does not deprive party of civil rights, including right to maintain action for damages for personal injury. Bosteder v. Duling, 115 Neb. 557, 213 N.W. 809 (1927).

Sentence to penitentiary does not corrupt the blood nor prevent legal representative of accused, who died pending appeal, from succeeding to property rights of accused. Stanisics v. State, 90

Neb. 278, 133 N.W. 412 (1911).

Penalty imposed by statute is not unconstitutional unless so excessive as to shock sense of mankind. McMahon v. State, 70 Neb. 722, 97 N.W. 1035 (1904).

Enforcement of penalty after proper notice and failure to remove fence or other obstruction from line of newly established highway does not contravene Constitution. Black v. Stein, 23 Neb. 302, 36 N.W. 548 (1888).

**I-16. Bill of attainder; retroactive laws; contracts; special privileges.**

No bill of attainder, ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities shall be passed.

**Source:**Neb. Const. art. I, sec. 16 (1875).

**Annotation**

**1. Ex post facto law**
**2. Obligation of contract**
**3. No irrevocable grant of special privilege**
**4. Miscellaneous**

**1. Ex post facto law**

The ex post facto clause does not prohibit retroactive application for civil disabilities and sanctions; only retroactive criminal punishment for past acts is prohibited. State v. Worm, 268 Neb. 74, 680 N.W.2d 151 (2004).

The registration requirement for an offender convicted of an aggravated offense under Nebraska's Sex Offender Registration Act is not a criminal punishment. State v. Worm, 268 Neb. 74, 680 N.W.2d 151 (2004).

Statutes which simply enlarge the class of persons who may be competent to testify in criminal cases are not ex post facto in their application to prosecutions for crimes committed prior to their passage, for they do not attach criminality to any act previously done, and which was innocent when done, nor aggravate any crime already committed, nor provide greater punishment, nor do they alter the degree of proof needed to convict. State v. Palmer, 224 Neb. 282, 399 N.W.2d 706 (1986).

Act reducing penalty for violation of Installment Loan Act did not violate this section. Davis v. General Motors Acceptance Corp., 176 Neb. 865, 127 N.W.2d 907 (1964).

Change in point system law for revocation of license to operate motor vehicle was not ex post facto legislation. Durfee v. Ress, 163 Neb. 768, 81 N.W.2d 148 (1957).

Constitutional prohibition against ex post facto laws applies only to penal or criminal matters, and does not apply to civil penalties imposed for failure to pay taxes. In re Estate of Rogers, 147 Neb. 1, 22 N.W.2d 297 (1946).

Law making an act criminal which was innocent when done, or making crime greater than when

committed, or which alters situation of party to his disadvantage, or inflicts greater punishment than law annexed to crime when committed, is ex post facto and exceeds the power granted Legislature in the Constitution. State v. McCoy, 87 Neb. 385, 127 N.W. 137 (1910); Marion v. State, 20 Neb. 233, 29 N.W. 911 (1886); Marion v. State, 16 Neb. 349, 20 N.W. 289 (1884).

A criminal law is not retroactive in its operation. State v. Hoon, 78 Neb. 618, 111 N.W. 462 (1907).

Law intended to affect transactions which occurred, or rights accrued, before it became operative, and which ascribed to them effects not inherent in their nature, in view of the law enforced at time of occurrence, is retrospective. Chicago, B. & Q. R. R. Co. v. State ex rel. City of Omaha, 47 Neb. 549, 66 N.W. 624 (1896).

**2. Obligation of contract**

Allowance of credit against malpractice judgment for any nonrefundable benefits claimant receives is not an unconstitutional impairment of contract. Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).

The Legislature may abrogate a right of action for a tort to happen in the future. State Securities Co. v. Norfolk Livestock Sales Co., Inc., 187 Neb. 446, 191 N.W.2d 614 (1971).

Retrospective statute distinguishing judgment liens for alimony and child support held to be constitutional. Hidy v. Hidy, 184 Neb. 527, 169 N.W.2d 285 (1969).

Statute creating Nebraska Power Review Board did not violate this section. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

Contract to sell school lands could not be impaired by subsequent legislation. Pfeifer v. Ableidinger, 166 Neb. 464, 89 N.W.2d 568 (1958).

Charter of public corporation does not constitute contract with state. United Community Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

Nonsigner provision of Fair Trade Act violated this section. McGraw Electric Co. v. Lewis & Smith Drug Co., Inc., 159 Neb. 703, 68 N.W.2d 608 (1955).

This section is a binding limitation on the exercise of governmental powers, legislative, executive or judicial, which "emergency" may not impair, destroy or modify, and the mortgage moratorium act violates constitutional provision on cessation of emergency for which enacted. First Trust Co. of Lincoln v. Smith, 134 Neb. 84, 277 N.W. 762 (1938); Strehlow v. Krings, 134 Neb. 82, 277 N.W. 784 (1938).

Disconnecting of lands from village is not impairment of contract of holder of village bonds. Hustead v. Village of Phillips, 131 Neb. 303, 267 N.W. 919 (1936); Hardin v. Pavlat, 130 Neb. 829, 266 N.W. 637 (1936).

This provision of Constitution does not conflict with Article XII, section 7, of Constitution, providing for double liability of stockholders of state banks. Luikart v. Higgins, 130 Neb. 395, 264 N.W. 903 (1936).

Statute may not operate retrospectively where it would impair obligation of contracts or interfere with vested rights. Travelers Ins. Co. v. Ohler, 119 Neb. 121, 227 N.W. 449 (1929).

Generally, the laws in force at the time a contract is entered into form a part of it and enter into its obligation, but the law then in force affording a remedy for a breach of the contract may be modified or changed without impairing the obligation of the contract, provided that an adequate remedy is left. Norris v. Tower, 102 Neb. 434, 167 N.W. 728 (1918).

Contracts between an irrigation company and consumers under the ditch, with reference to annual rates which should be charged for the use of water, were entered into with the law forming a part of the contract and subject to legislative control. McCook Irr. & Water Power Co. v. Burtless, 98 Neb. 141, 152 N.W. 334 (1915).

Curative acts, which attempt to take away property rights already vested, violate the Constitution. Draper v. Clayton, 87 Neb. 443, 127 N.W. 369 (1910); Helming v. Forrester, 87 Neb. 438, 127 N.W. 373 (1910).

Anti-pass laws, prohibiting free transportation by railroads, do not impair contracts. State v. Martyn, 82 Neb. 225, 117 N.W. 719 (1908).

An act which in effect takes away from counties any cause of action which they might have against persons who have been treasurers, for money which they have been allowed by the county board to retain as commissions on money received, impairs contract obligations of county. Kearney County v. Taylor, 54 Neb. 542, 74 N.W. 965 (1898).

Obligation is impaired whenever remedy is taken away or abolished, or legal obligations diminished, suspended or destroyed by abolishing remedy, or when enforcement burdened by new or unreasonable conditions or restrictions. American Bldg. & Loan Assn. v. Rainbolt, 48 Neb. 434, 67 N.W. 493 (1896).

Lease of public lands providing that lessor shall have right to choose one of the arbitrators for every five years for purpose of valuation, is indispensable contract right and cannot thereafter be changed by subsequent legislation. State ex rel. Brown v. McPeak, 31 Neb. 139, 47 N.W. 691 (1891).

Statute merely changing remedy or mode of enforcing contract is not impairment so as to violate this section. Henry O. Jones v. Elizabeth Davis, 6 Neb. 33 (1877).

Act requiring holder of over-due county warrant drawing 10 per cent to surrender same to county for bonds drawing 7 per cent is void as impairing contract obligation. Brewer v. Otoe County, 1 Neb. 373 (1871).

Reorganization of insolvent state bank under Bank Act of 1929 held to impair obligation of contract as to nonconsenting depositor. Hessen Siak Shams v. Nebraska State Bank of Bloomfield, 48 F.2d 894 (D. Neb. 1931).

**3. No irrevocable grant of special privilege**

Provisions of Grid System Act constituted a grant of special privileges and an unlawful splitting

of a class, and was unconstitutional. Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966).

Installment Sales Act of 1965 did not violate this section. Engelmeyer v. Murphy, 180 Neb. 295, 142 N.W.2d 342 (1966).

Legislative Bill 11 of the 1963 Special Session violated this section and was unconstitutional in its entirety. State Securities Co. v. Ley, 177 Neb. 251, 128 N.W.2d 766 (1964).

Legislative act permitting higher rate of interest to be charged by retailers of motor vehicles was a grant of special privilege in violation of this section. Stanton v. Mattson, 175 Neb. 767, 123 N.W.2d 844 (1963).

Constitutionality of Installment Sales Act of 1959 under this section raised, but case decided under another section of the Constitution. Elder v. Doerr, 175 Neb. 483, 122 N.W.2d 528 (1963).

Levy of tax for municipal university did not violate special privileges clause. Ratigan v. Davis, 175 Neb. 416, 122 N.W.2d 12 (1963).

Imposition of liability for reimbursement on estate of recipient of old age assistance does not violate this section. Boone County Old Age Assistance Board v. Myhre, 149 Neb. 669, 32 N.W.2d 262 (1948).

A private employment agency is not a business in which the public has such an interest that price fixing may properly be included as a method of regulation. Boomer v. Olsen, 143 Neb. 579, 10 N.W.2d 507 (1943).

Statutes creating housing authorities for slum clearance sustained against claim of violation of this section. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

Statutory provision limiting issuance of motor vehicle dealer's license for sale of new cars to persons enfranchised by the manufacturers is an unlawful restriction on right to follow a lawful pursuit. Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388 (1939).

The Legislature is not prohibited from dictating how county road funds shall be used or allocated. City of Fremont v. Dodge County, 130 Neb. 856, 266 N.W. 771 (1936).

Provisions of irrigation act providing for granting by irrigation board of priority of right to use of water does not contravene this section of the Constitution. Farmers Canal Co. v. Frank, 72 Neb. 136, 100 N.W. 286 (1904).

Municipal grant of franchise for distribution of electric current, if not exclusive, and in the absence of specific limitation or duration, was in perpetuity and conveyed rights of property within the provisions of this section. Old Colony Trust Co. v. Omaha, 230 U.S. 100 (1913).

Statute authorizing city to make irrevocable contract with gas and electric company for maximum rates for twenty-year term is not a violation of this section forbidding Legislature to

make "any irrevocable grant of special privileges." Nebraska Gas & Electric Co. v. City of Stromsburg, 2 F.2d 518 (8th Cir. 1924).

**4. Miscellaneous**

Only the clearest proof suffices to establish the unconstitutionality of a statute as a bill of attainder. State v. Galindo, 278 Neb. 599, 774 N.W.2d 190 (2009).

Constitutionality of Municipal Ground Water Act raised, but not decided. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

**I-17. Military subordinate.**

The military shall be in strict subordination to the civil power.

**Source:**Neb. Const. art. I, sec. 17 (1875).

**I-18. Soldiers quarters.**

No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war except in the manner prescribed by law.

**Source:**Neb. Const. art I, sec. 18 (1875).

**I-19. Right of peaceable assembly and to petition government.**

The right of the people peaceably to assemble to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.

**Source:**Neb. Const. art. I, sec. 19 (1875).

**Annotation**

A political meeting or convention is an assemblage within the meaning of the Constitution that the right of the people to assemble and consult for common good shall never be abridged. With good motives and for justifiable ends the membership of such a body may jointly speak and publish the truth about candidates for office and this right extends to aspirants for judicial and educational offices. State ex rel. Ragan v. Junkin, 85 Neb. 1, 122 N.W. 473 (1909).

The people have the right to petition the Governor on the subject of proposed legislation. Weis v. Ashley, 59 Neb. 494, 81 N.W. 318 (1899).

**I-20. Imprisonment for debt prohibited.**

No person shall be imprisoned for debt in any civil action on mesne or final process.

**Source:**Neb. Const. art. I, sec. 20 (1875); Amended 1998, Laws 1997, LR 26CA, sec. 1.

**Annotation**

**1. Cases involving fraud**
**2. Debt**
**3. Miscellaneous**

**1. Cases involving fraud**

Section 28-611(1), R.R.S.1943, the Nebraska "bad check statute", does not violate this section of the Constitution because section 28-611(1), R.R.S.1943, contains the elements of fraud by its very definition. State v. Kock, 207 Neb. 731, 300 N.W.2d 824 (1981).

Section 69-109, R.S.Supp.,1980, held not to violate this section, since a requirement of fraud has been engrafted onto the statute by judicial interpretation and thereafter statute was reenacted in same form by Legislature, thus supplying the fraud requirement. State v. Hocutt, 207 Neb. 689, 300 N.W.2d 198 (1981).

Statute which permits criminal prosecution without requiring proof of fraud violates this section. State ex rel. Norton v. Janing, 182 Neb. 539, 156 N.W.2d 9 (1968).

**2. Debt**

Award of alimony, suit money and attorney's fees in divorce action does not create "debt" within meaning of this section. Jensen v. Jensen, 119 Neb. 469, 229 N.W. 770 (1930).

Order to pay temporary alimony is not a mere debt, and imprisonment for contempt in willfully refusing to obey such order does not violate this section. Cain v. Miller, 109 Neb. 441, 191 N.W. 704 (1922).

Fine for violation of liquor laws, one-fourth to be paid to complaining witness, is not a debt. Sothman v. State, 66 Neb. 302, 92 N.W. 303 (1902).

Judgment in "children born out of wedlock" proceeding is not debt. Ex parte Donahoe, 24 Neb. 66, 38 N.W. 28 (1888); Ex parte Cottrell, 13 Neb. 193, 13 N.W. 174 (1882).

**3. Miscellaneous**

Statute, making issuance of no-fund check a criminal offense, does not violate constitutional provision against imprisonment for debt. White v. State, 135 Neb. 154, 280 N.W. 433 (1938).

Act providing for prosecution and punishment by imprisonment of husband for refusal to pay alimony for support of minor child is not violative of this section. Fussell v. State, 102 Neb. 117, 166 N.W. 197 (1918).

This section has no application to the case of a license tax imposed upon peddlers, if the object is the raising of revenue and its enactment was an exercise of the taxing power and not the police power. Rosenbloom v. State, 64 Neb. 342, 89 N.W. 1053 (1902).

**I-21. Private property compensated for.**

The property of no person shall be taken or damaged for public use without just compensation therefor.

**Source:**Neb. Const. art. I, sec. 21 (1875).

**Annotation**



**1. Property, what constitutes**

A Nebraska Public Service Commission order which directed incumbent local exchange carriers to comply with an order establishing multidwelling unit regulations and a statewide policy for access to multidwelling units by competitive local exchange carriers did not constitute a taking. In re Application of Neb. Pub. Serv. Comm., 260 Neb. 780, 619 N.W.2d 809 (2000).

Recovery may be had for damages to property occasioned by temporary takings. Whitehead Oil Co. v. City of Lincoln, 245 Neb. 680, 515 N.W.2d 401 (1994).

Lawful covenants restricting the use of land and binding upon successors in title constitute an interest in the land and property in the constitutional sense. Horst v. Housing Authority, 184 Neb. 215, 166 N.W.2d 119 (1969).

A tenant for a term of years has a property right in land which is protected by this section. Johnson v. City of Lincoln, 174 Neb. 837, 120 N.W.2d 297 (1963).

Unexercised option to purchase real estate need not be compensated for in eminent domain proceedings. Phillips Petroleum Co. v. City of Omaha, 171 Neb. 457, 106 N.W.2d 727 (1960).

Legislature could not lawfully deprive lessee of school land lease of option to purchase. Pfeifer v. Ableidinger, 166 Neb. 464, 89 N.W.2d 568 (1958).

City is not liable to adjacent property owner for destruction of shade trees in street. Weibel v. City of Beatrice, 163 Neb. 183, 79 N.W.2d 67 (1956).

Claim made and rejected that appropriation of surface and ground waters without compensation violated this section. Dischner v. Loup River P. P. Dist., 147 Neb. 949, 25 N.W.2d 813 (1947).

Property rights of a lessee under school land lease are protected from invasion under the power of eminent domain. State v. Platte Valley P. P. & I. Dist., 147 Neb. 289, 23 N.W.2d 300 (1946).

The right to use water for a beneficial purpose is a property right, subject to the constitutional provisions regulating the taking of private property for public use. Loup River Public Power Dist. v. North Loup River Public Power & Irr. Dist., 142 Neb. 141, 5 N.W.2d 240 (1942).

Accretions are property within the meaning of this section. Thies v. Platte Valley Public Power & Irr. Dist., 137 Neb. 344, 289 N.W. 386 (1939).

Right of irrigation district to appropriate water is property and this right is protected by way of damages when water is diverted. Nine Mile Irr. Dist. v. State, 118 Neb. 522, 225 N.W. 679

(1929).

Riparian rights under an appropriation of water are property. McCook Irr. & Water Power Co. v. Crews, 70 Neb. 115, 102 N.W. 249 (1905).

A riparian's right to the use of the flow of the stream passing through or by his land is a right inseparably annexed to the soil and such right is entitled to protection as such, the same as private property rights. Crawford Company v. Hathaway, 67 Neb. 325, 93 N.W. 781 (1903).

Mortgagee's interest in property taken for public use is property, and requires notice to mortgagee in eminent domain proceedings. Dodge v. Omaha & S. W. R. R. Co., 20 Neb. 276, 29 N.W. 936 (1886).

**2. Public use**

Private property may not be taken under the power of eminent domain for a private use. Burger v. City of Beatrice, 181 Neb. 213, 147 N.W.2d 784 (1967).

Acquisition of aviation easement was a damage for public use, for which compensation could be recovered. Johnson v. Airport Authority, 173 Neb. 801, 115 N.W.2d 426 (1962).

Where land is taken outside the boundaries of right-of-way condemned, it constitutes a second taking of private property for public use. Armbruster v. Stanton-Pilger Drainage Dist., 169 Neb. 594, 100 N.W.2d 781 (1960).

Recovery on behalf of city by taxpayer of amount paid on void contract was not a taking of defendant's property for public use without compensation. Arthur v. Trindel, 168 Neb. 429, 96 N.W.2d 208 (1959).

Where land is taken outside the boundaries of right-of-way condemned, liability attaches for a second taking of private property for public use. McGree v. Stanton-Pilger Drainage Dist., 164 Neb. 552, 82 N.W.2d 798 (1957).

City ordinance imposing license fee on taxicabs is not taking of private property for public use. Richter v. City of Lincoln, 136 Neb. 289, 285 N.W. 593 (1939).

An individual does not have the right of eminent domain for the use and benefit of himself or his estate under the statute for the irrigation of his own land. Onstott v. Airdale Ranch & Cattle Co., 129 Neb. 54, 260 N.W. 556 (1935).

The furnishing of water to the inhabitants of a city for the purpose of health, convenience, and comfort is a public use of such water. Olson v. City of Wahoo, 124 Neb. 802, 248 N.W. 304 (1933).

Statute authorizing private individuals to create and fix boundaries of a district for public improvement, to be paid for by taxes levied on the property within the district, without a tribunal for determination whether owner's property was arbitrarily or unjustly included, violates this section. Elliott v. Wille, 112 Neb. 78, 200 N.W. 847 (1924).

Statutes providing for special assessments for paving, when not in excess of special benefits, are

not invalid as taking private property for public use. Brown Real Estate Co. v. Lancaster County, 110 Neb. 665, 194 N.W. 897 (1923).

Statute making railroad company liable for one dollar per day per car for delay in forwarding, giving notices, or delivery, and in addition thereto imposes liability for actual damages caused by such delay, by necessary implication, violates this section. Sunderland Bros. Co. v. Chicago, B. & Q. R. R. Co., 104 Neb. 319, 177 N.W. 156 (1920).

Ordinance prohibiting removal of garbage except by city employee, is not taking of private property in violation of this section, though it prevents restaurant keeper from selling garbage as feed for swine. Urbach v. City of Omaha, 101 Neb. 314, 163 N.W. 307 (1917).

The use of water power to generate electricity to supply a city and its inhabitants with light and power is a public use and owners of riparian lands should be entitled to damages sustained. Lucas v. Ashland Light, Mill & Power Co., 92 Neb. 550, 138 N.W. 761 (1912).

Transferring unclaimed witness fees and costs to school fund is not taking of private property for public use. Douglas County v. Moores, 66 Neb. 284, 92 N.W. 199 (1902), overruling State ex rel. Broatch v. Moores, 52 Neb. 770, 73 N.W. 299 (1897).

Use of water for irrigation works, and establishment thereof, must be common and not to a particular individual to be a public use. Paxton & Hershey Irr. Canal & Land Co. v. Farmers & Merchants Irr. & Land Co., 45 Neb. 884, 64 N.W. 343 (1895).

Use need not be for benefit of whole public or state, but may be for benefit of small and restricted locality, provided use and benefit is common, not to particular individual or estate. Welton v. Dickson, 38 Neb. 767, 57 N.W. 559 (1894).

Where statute required railroad company to provide underground cattle pass partly at company expense, not as safety measure but to save farmer inconvenience, there was a taking of private property for public use. Chicago, St. P., M. & O. Ry. Co. v. Holmberg, 282 U.S. 162 (1930), reversing Holmberg v. Chicago, St. P., M. & O. Ry. Co., 115 Neb. 727, 214 N.W. 746 (1927).

Condemnation by drainage district in conformity with Nebraska statute was not for private purpose, where the enterprise had been adjudged by state court to be public utility. O'Neill v. Leamer, 239 U.S. 244 (1915).

Statute requiring property owners to destroy as public nuisance red cedar trees growing within two miles of orchards containing 1,000 or more apple trees is not void as taking of property for public or private use without compensation. Upton v. Felton, 4 F.Supp. 585 (D. Neb. 1932).

**3. Public improvements**

County and irrigation district were liable for damages caused by structure placed in drainage ditch. Baum v. County of Scotts Bluff, 169 Neb. 816, 101 N.W.2d 455 (1960).

Municipality would be held liable for damages resulting from construction and maintenance of flood control project. Gruntorad v. Hughes Bros. Inc., 161 Neb. 358, 73 N.W.2d 700 (1955).

The only foundation for a local assessment lies in the special benefits conferred upon the

property assessed by the improvement, and an assessment beyond the benefit so conferred is a taking of property for public use without compensation and therefore illegal. Loup River Public Power Dist. v. Platte County, 144 Neb. 600, 14 N.W.2d 210 (1944).

City is liable to abutting property owner for damages caused by paving street in accordance with established grade ordinance. Heflin v. City of Lincoln, 131 Neb. 484, 268 N.W. 364 (1936).

Property abutting on street is "damaged" within meaning of Constitution by changing grade from natural level. Stocking v. City of Lincoln, 93 Neb. 798, 142 N.W. 104 (1913).

Petition was insufficient to allege damages to adjacent property for erection of standpipe for city water supply. Bonge v. Village of Winnetoon, 90 Neb. 260, 133 N.W. 203 (1911).

Landowner is entitled to recover the damages he has actually sustained, less the special benefits to his property, if any, by subsequent change of street grade. Kavan v. South Omaha, 86 Neb. 469, 126 N.W. 77 (1910).

Owner of land is entitled to compensation for taking of part thereof for highway purposes. Johnson v. Peterson, 85 Neb. 83, 122 N.W. 683 (1909).

The construction and operation of railroad and closing of a public street entitles landowner to recover the difference between the value of the land before and its value after the road was constructed and put in operation. Chicago, R. I. & P. R. R. Co. v. O'Neill, 58 Neb. 239, 78 N.W. 521 (1899).

The placing of poles and wires in city street by an electric street railway is such interference with owner's enjoyment of property to entitle him to compensation commensurate with injury sustained. Jaynes v. Omaha Street Ry. Co., 53 Neb. 631, 74 N.W. 67 (1898).

Owner of land is entitled to damages resulting from grading street or highway by either county or city. Douglas County v. Taylor, 50 Neb. 535, 70 N.W. 27 (1897).

A city is liable to a lot owner for the diminution in value of his property caused by construction of a sewer, built by the city near his lot, on which a brick building had been erected before the sewer grade was established. City of Plattsmouth v. Boeck, 32 Neb. 297, 49 N.W. 167 (1891).

A city is liable to a lot owner for such damages as he may sustain by filling in the street in front of his lot above the level of the same, when the buildings were erected on the lot before any grade was established or by reason of filling in street. Hammond v. City of Harvard, 31 Neb. 635, 48 N.W. 462 (1891); Harmon v. City of Omaha, 17 Neb. 548, 23 N.W. 503 (1885).

Depreciation in value in construction of public improvements entitles abutting owner to just compensation therefor. Chicago, K. & N. Ry. Co. v. Hazels, 26 Neb. 364, 42 N.W. 93 (1889).

Before section line road can be opened and worked, the damages suffered by the owners whose lands are taken must be ascertained and paid. Chicago, B. & Q. R. R. Co. v. Douglas County, 1 Neb. Unof. 247, 95 N.W. 339 (1901).

**4. Damages**

The diminution in market value establishes the damages in an eminent domain case, and the term "consequential damage" only defines the kinds of damages which are compensable. Walkenhorst v. State, Dept. of Roads, 253 Neb. 986, 573 N.W.2d 474 (1998).

When private property has been damaged for public use, the owner is entitled to seek compensation in a direct action under this constitutional provision, regardless of whether the plaintiff could have sued in tort under the Political Subdivisions Tort Claims Act. Uhing v. City of Oakland, 236 Neb. 58, 459 N.W.2d 187 (1990).

Where cropland, no part of which is taken, temporarily suffers compensable damage, the measure of compensation is not the market value, but the value of the use for the period damaged, i.e., the value of the crops which could and would have been grown upon the land. Kula v. Prososki, 228 Neb. 692, 424 N.W.2d 117 (1988).

When a political subdivision with the power of eminent domain damages property for a public use, the property owner may seek damages in an action for tort, in an action for inverse condemnation under the provisions of sections 76-701 to 76-725, or in an action under the language of this provision. Slusarski v. County of Platte, 226 Neb. 889, 416 N.W.2d 213 (1987).

When private property has been damaged for a public use, the owner of such property is entitled to seek compensation in an action under this section. Parriott v. Drainage District No. 6 of Peru, 226 Neb. 123, 410 N.W.2d 97 (1987).

An irrigation district may be liable for damage due to seepage without proof of negligence if the district's activities caused the seepage. Wood v. Farwell Irr. Dist., 217 Neb. 511, 349 N.W.2d 633 (1984).

Under this section, an irrigation district is strictly liable for seepage damage. Lindgren v. City of Gering, 206 Neb. 360, 292 N.W.2d 921 (1980).

Damages caused by fire spreading from municipal dump onto land of plaintiff is within protection of this section. Colburn v. City of Valentine, 183 Neb. 391, 160 N.W.2d 203 (1968).

An abutting property owner is entitled to recover damages resulting from material impairment of his right of access to an existing highway. Swanson v. State, 178 Neb. 671, 134 N.W.2d 810 (1965).

Recovery could be had where prohibition was imposed by statute upon use of land for display of highway signs. Fulmer v. State, 178 Neb. 20, 131 N.W.2d 657 (1964), opinion withdrawn, 178 Neb. 664, 134 N.W.2d 798 (1965).

All actual damages resulting from exercise of power of eminent domain which diminish market value of property not taken may be recovered. Pieper v. City of Scottsbluff, 176 Neb. 561, 126 N.W.2d 865 (1964).

Tenant was entitled to recover damages for deprivation of right to produce crop. State v. Dillon, 175 Neb. 350, 121 N.W.2d 798 (1963).

The words "or damaged" include all actual damages resulting from the exercise of the power of eminent domain. Leffelman v. City of Hartington, 173 Neb. 259, 113 N.W.2d 107 (1962).

Constitutional provision does not change measure of damages in taking of leasehold. Ballantyne Co. v. City of Omaha, 173 Neb. 229, 113 N.W.2d 486 (1962).

Agreement by city to construct median and barrier curbs in street did not violate this section. Hillerege v. City of Scottsbluff, 164 Neb. 560, 83 N.W.2d 76 (1957).

Temporary damage created by maintenance of a public city dump was recoverable. Patrick v. City of Bellevue, 164 Neb. 196, 82 N.W.2d 274 (1957).

All actual damages resulting from exercise of power of eminent domain may be recovered. Platte Valley Public Power & Irr. Dist. v. Armstrong, 159 Neb. 609, 68 N.W.2d 200 (1955).

Injury to entire property consisting of several city lots could be considered. Rath v. Sanitary District No. One of Lancaster County, 156 Neb. 444, 56 N.W.2d 741 (1955).

All damages which diminish market value of private property may be recovered. Quest v. East Omaha Drainage Dist., 155 Neb. 538, 52 N.W.2d 417 (1952).

Landowner is assured of recovery in one action of the whole damage sustained. Little v. Loup River Public Power Dist., 150 Neb. 864, 36 N.W.2d 261 (1949).

Proof of negligence or the commission of a wrongful act is not necessary to a recovery. Wagner v. Loup River Public Power Dist., 150 Neb. 7, 33 N.W.2d 300 (1948).

Damages from seepage caused by public power and irrigation districts can be recovered under this provision without regard to negligence. Halligan v. Elander, 147 Neb. 709, 25 N.W.2d 13 (1946).

Suit may be maintained against state under this section for improper construction of state highway. Schmutte v. State, 147 Neb. 193, 22 N.W.2d 691 (1946).

The words "or damaged" include all actual damages resulting from the exercise of the right of eminent domain which diminish the market value of private property. Robinson v. Central Nebraska Public Power & Irr. Dist., 146 Neb. 534, 20 N.W.2d 509 (1945).

Legislative act conditionally destroying right to recover damages arising from flooding of lands by drainage district violated this section. Cooper v. Sanitary Dist. No. 1 of Lancaster County, 146 Neb. 412, 19 N.W.2d 619 (1945).

Damages sustained by all property owners alike arising from removal and relocation of railroad cannot be recovered under this provision of the Constitution. Scully v. Central Nebraska Public Power & Irr. Dist., 143 Neb. 184, 9 N.W.2d 207 (1943).

Measure of damages for land taken for public use is the fair and reasonable market value of the land actually taken and the difference in the fair and reasonable market value of the remainder of the land before and after the taking. Schultz v. Central Nebraska Public Power & Irr. Dist.,

138 Neb. 529, 293 N.W. 409 (1940).

In action for damages to land caused by seepage from reservoir, recovery for loss of crops for 1936 and 1937, and for depreciation of land at time of trial was proper. Applegate v. Platte Valley Public Power & Irr. Dist., 136 Neb. 280, 285 N.W. 585 (1939).

The words "or damaged" include all damages arising from the exercise of right of eminent domain which cause a diminution in value of a leasehold. James Poultry Co. v. Nebraska City, 135 Neb. 787, 284 N.W. 273 (1939).

A city is liable to owner of abutting real estate for damages caused by changing the grade of street. Quivey v. City of Mitchell, 133 Neb. 727, 277 N.W. 50 (1938).

Rule of damages is value of land actually taken and also depreciation in value of remainder of tract, exclusive of general benefits. Regouby v. Dawson County Irr. Co., 126 Neb. 711, 254 N.W. 389 (1934).

Subsequent change in highway grade to facilitate travel is not basis for action for additional damages. Psota v. Sherman County, 124 Neb. 154, 245 N.W. 405 (1932).

Organizer of irrigation district under the statutes waives right to compensation under this section for damages to property and accepts in lieu thereof the statutory remedy. Omaha Life Ins. Co. v. Gering & Ft. Laramie Irr. Dist., 123 Neb. 761, 244 N.W. 296 (1932).

One whose land is damaged temporarily for public use by the construction of a public improvement by the state suffers such a damage as requires compensation under this section. Gledhill v. State, 123 Neb. 726, 243 N.W. 909 (1932).

Seepage from irrigation ditches does not entitle adjoining landowners to damages for taking or damaging property for public use. Livanis v. Northport Irr. Dist., 121 Neb. 777, 238 N.W. 757 (1931); Spurrier v. Mitchell Irr. Dist., 119 Neb. 401, 229 N.W. 273 (1930), overruled in Snyder v. Platte Valley P. P. & I. Dist., 144 Neb. 308, 13 N.W.2d 160 (1944).

Liability of drainage district extends to damages caused by reason of volume of water passed on plaintiff's land. Compton v. Elkhorn Valley Drainage Dist., 120 Neb. 94, 231 N.W. 685 (1930).

The words "or damaged" include all damages causing diminution in value by reason of vacating public highway. Lowell v. Buffalo County, 119 Neb. 776, 230 N.W. 842 (1930).

Construction of drainage ditches across public highway does not damage abutting property within meaning of Constitution. Douglas County v. Papillion Drainage Dist., 92 Neb. 771, 139 N.W. 718 (1913).

Where in the performance of duty railroads may be required, when necessary, to construct viaducts over and across their tracks, they are liable for damages to any person whose property is injured by such construction. Phoenix Mutual Life Ins. Co. v. City of Lincoln, 91 Neb. 150, 135 N.W. 445 (1912).

In the taking or damaging of private property by a drainage district corporation in carrying out

the purposes of its organization, landowner is entitled to damages for the location of a highway or the construction of a railroad. Nemaha Valley Drainage Dist. No. 2 v. Marconnit, 90 Neb. 514, 134 N.W. 177 (1912).

Measure of damages for lowering the surface of street in front of lots was the difference between market value of the real estate immediately before and after the grading. Whelan v. City of Plattsmouth, 87 Neb. 824, 128 N.W. 520 (1910).

Granting of right-of-way for construction and maintenance of poles and wires does not permit the trimming of trees without responding in damages. Slabaugh v. Omaha Electric Light & Power Co., 87 Neb. 805, 128 N.W. 505 (1910).

One whose land is traversed by a drainage ditch is entitled to recover the value of the land actually taken therefor, together with special damages, if any, to the remainder, but not in such proceedings the damages sustained for neglect of county board to keep a previously established ditch free from silt and debris. Gutschow v. Washington County, 81 Neb. 275, 116 N.W. 46 (1908).

Where city partially vacates a street and builds a viaduct thereon opposite landowner's real estate abutting on such street, thereby diminishing the convenience of access to such property, the true measure of damages is the difference in value of property before and immediately after the improvement, unaffected by increase or decrease of property values generally in same vicinity. Gillespie v. South Omaha, 79 Neb. 441, 112 N.W. 582 (1907).

The words "or damaged" include smoke, soot, noise, and convenience of ingress and egress. Stehr v. Mason City & Fort Dodge Ry. Co., 77 Neb. 641, 110 N.W. 701 (1906).

A person whose property has been taken for a highway is entitled not only to the fair market value of the land actually taken, but also such additional damages as accrue to the remainder of the tract by reason of the opening of the road. Scace v. Wayne County, 72 Neb. 162, 100 N.W. 149 (1904).

The words "or damaged" include all damages arising from the exercise of the right of eminent domain which cause a diminution in the value of private property. City of Omaha v. Kramer, 25 Neb. 489, 41 N.W. 295 (1889).

The insertion of the words "or damaged" was intended to give a right of recovery which did not previously exist, and was not intended to limit or restrict any remedy previously existing. Omaha & R. V. R. R. Co. v. Standen, 22 Neb. 343, 35 N.W. 183 (1887).

The words "or damaged" were added to Constitution to grant relief in cases where no direct injury to the real estate, but some physical disturbance of a right possessed by owner in connection therewith. Gottschalk v. C., B. & Q. R. R., 14 Neb. 550, 16 N.W. 475 (1883), 17 N.W. 120 (1883).

Where damages for original construction have been settled or barred, railroad company is not liable to neighboring property owners for damages from smoke. Thompson v. Kimball, 165 F.2d 677 (8th Cir. 1948).

Operator of irrigation canal under state authority is liable for incidental damage to private property. Hooker v. Farmers Irr. Dist., 272 F. 600 (8th Cir. 1921).

**5. Just compensation**

The Nebraska Constitution limits the sovereign's absolute power to take private property by requiring that property owners whose property has been taken or damaged for public use under the eminent domain authority be compensated. Burlington Northern and Santa Fe Ry. Co. v. Chaulk, 262 Neb. 235, 631 N.W.2d 131 (2001).

Payment of just compensation applies only to vested property rights. Tracy v. City of Deshler, 253 Neb. 170, 568 N.W.2d 903 (1997).

Where city of Fairbury obtained an easement by prescription across plaintiffs' land for public sewer, compensation of plaintiffs referred to in this section not required. Beach v. City of Fairbury, 207 Neb. 836, 301 N.W.2d 584 (1981).

Right of landowner to just compensation for property taken or damaged for public use is guaranteed by this section. W.E.W. Truck Lines, Inc. v. State, 178 Neb. 218, 132 N.W.2d 782 (1965).

Right of landowner or lessee to just compensation for property taken or damaged for public use is guaranteed by this section. Balog v. State, 177 Neb. 826, 131 N.W.2d 402 (1964).

Landowner could not be deprived without compensation of right to reversion of property upon vacation of street. Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960).

Exercise of power of eminent domain has been limited only insofar as it is required that just compensation shall be paid for all property taken or damaged. Burnett v. Central Neb. P. P. & I. Dist., 147 Neb. 458, 23 N.W.2d 661 (1946).

Owner is entitled to recover full compensation for land actually taken and such damages to the remainder as are equivalent to diminution in the fair market value thereof. Langdon v. Loup River Public Power Dist., 144 Neb. 325, 13 N.W.2d 168 (1944).

Condemner is required to compensate for property taken, and also for consequential damage to other property in excess of damage sustained by the public at large. Snyder v. Platte Valley Public Power & Irr. Dist., 144 Neb. 308, 13 N.W.2d 160 (1944).

Temporary damage caused by acquisition of an easement for construction of electric transmission line requires payment of compensation. Pierce v. Platte Valley Public Power & Irr. Dist., 143 Neb. 898, 11 N.W.2d 813 (1943).

Section cited in stating contention of public power and irrigation district that assessments for drainage ditch were beyond the benefits conferred, and operated to take property without compensation in violation of this section. Loup River Public Power Dist. v. County of Platte, 141 Neb. 29, 2 N.W.2d 609 (1942).

In a proceeding to condemn riparian land for public use, consequential damages to other land in the same tract are not limited to governmental section a part of which is included in the land

actually taken, where depreciation in the value of the remainder extends beyond those sections. McGinley v. Platte Valley Public Power & Irr. Dist., 133 Neb. 420, 275 N.W. 593 (1937). (Syllabus No. 2, McGinley v. Platte Valley Dist., 132 Neb. 292, 271 N.W. 864 (1937), withdrawn.)

A public power and irrigation district is not authorized to condemn and take private property for public use without just compensation. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

The compensation for land taken by eminent domain is measured by its market value at the time taken, and no evidence is admissible of its peculiar value for special reasons to its owner. Wiles v. Department of Public Works, 120 Neb. 689, 234 N.W. 918 (1931).

"Just compensation" means market value at time of taking, and includes interest from time owner deprived of use pending appeal. Sioux City R. R. Co. v. Brown, 13 Neb. 317, 14 N.W. 407 (1882).

Compensation shall be made for the fair market value of the land actually taken, while special benefits may be set off against any local or incidental injury. Wagner v. Gage County, 3 Neb. 237 (1874).

Statute requiring railroads to construct sidetracks to elevators along right-of-way of railway company is taking property without just compensation. Missouri Pacific Railway Co. v. State, 217 U.S. 196 (1910), reversing State No. Missouri Pacific Railway Co., 81 Neb. 15, 115 N.W. 614 (1908).

Loss of market place by landowner, due to removal of town occasioned by condemnation for reservoir site, is a damage common to all of the inhabitants around it, and does not deprive the landowner of property without just compensation. Feltz v. Central Nebraska Public Power & Irr. Dist., 124 F.2d 578 (8th Cir. 1942).

**6. Compensation, payment**

Change from a two-way street to a one-way street is not ordinarily compensable in eminent domain proceedings. Painter v. State, 177 Neb. 905, 131 N.W.2d 587 (1964).

Restricting funds from which a public power and irrigation district may pay for private property taken or damaged solely to revenue derived from operation, does not violate constitutional provision. Johnson v. Platte Valley Public Power & Irr. Dist., 133 Neb. 97, 274 N.W. 386 (1937).

Public utility property cannot be acquired by a city by condemnation without paying for it. City of Mitchell v. Western Public Service Co., 124 Neb. 248, 246 N.W. 484 (1933).

Though claim for damages not filed by owner in time, county cannot appropriate land for road without paying damages. Weinel v. Box Butte County, 108 Neb. 293, 187 N.W. 939 (1922).

Lessee of school land is entitled to damages before road opened. Beste v. Cedar County, 87 Neb. 689, 128 N.W. 29 (1910).

Payment need not, unless so provided by law, precede actual taking; it is for the Legislature to determine manner of taking and time and manner of payment. State v. Several Parcels of Land, 79 Neb. 638, 113 N.W. 248 (1907).

Object of section is to stay the hand of the sovereign from the property of the individual until proper compensation has been made. Hopper v. Douglas County, 75 Neb. 329, 106 N.W. 330 (1905).

Until compensation of the landowner has been made sure and certain, he may not be compelled to give up his property, and the public use of the same may be enjoined. Morris v. Washington County, 72 Neb. 174, 100 N.W. 144 (1904).

Statute for depositing award with county judge is only intended as security and does not constitute payment. Brown v. Chicago, R. I. & P. Ry. Co., 66 Neb. 106, 92 N.W. 128 (1902).

Owner of property taken by eminent domain proceedings is not compensated until the sum to which he is entitled is paid or tendered to him or to someone authorized by him to receive it. Brown v. Chicago, R. I. & P. Ry. Co., 64 Neb. 62, 89 N.W. 405 (1902).

A landowner cannot be required to surrender his land for a public use until his damages are first ascertained, and either paid or proper provision made for their payment. Lewis v. City of Lincoln, 55 Neb. 1, 75 N.W. 154 (1898); Hodges v. Board of Supervisors of Seward County, 49 Neb. 666, 68 N.W. 1027 (1896); Hogsett v. Harlan County, 4 Neb. Unof. 310, 97 N.W. 316 (1903).

The just compensation required to be made for taking private property for public use, must, before such taking, be ascertained and payment made accordingly, whether the appropriation of such property is by a municipal or other corporation. Livingston v. County Commissioners of Johnson County, 42 Neb. 277, 60 N.W. 555 (1894).

**7. Miscellaneous**

The Nebraska Constitution's limit on the sovereign power of eminent domain set forth in this provision applies to temporary as well as permanent takings. Burlington Northern and Santa Fe Ry. Co. v. Chaulk, 262 Neb. 235, 631 N.W.2d 131 (2001).

As this provision is self-executory, a petition alleging that one's property was damaged for a public use is sufficient as against a general demurrer, notwithstanding the fact that the petition refers neither to this article and section nor to the pertinent constitutional language. Slusarski v. County of Platte, 226 Neb. 889, 416 N.W.2d 213 (1987).

To recover damages for loss of or damage to land taken for a public use under this section, it is not necessary that the constitutional provision be set out or its existence alleged in the petition stating the cause of action. It is sufficient for the litigant to allege and prove facts constituting a cause of action because of the loss. Kula v. Prososki, 219 Neb. 626, 365 N.W.2d 441 (1985).

A city may not require a property owner to dedicate private property for some future public purpose as a condition for receiving a building permit unless such future use is directly occasioned by the construction for which the permit is sought. In other cases, eminent domain proceedings are required and compensation must be paid. Simpson v. City of North Platte, 206

Neb. 240, 292 N.W.2d 297 (1980).

When construing eminent domain statutes fundamental concept of this section must be considered. Keller v. State, 184 Neb. 853, 172 N.W.2d 782 (1969).

Cited in a reverse condemnation action. Dietloff v. City of Norfolk, 183 Neb. 648, 163 N.W.2d 586 (1968).

Act of Legislature authorizing city of primary class to annex contiguous or adjacent lands did not violate this section. Campbell v. City of Lincoln, 182 Neb. 459, 155 N.W.2d 444 (1968).

Airport Authority Act did not violate this section. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

Constitutionality of Municipal Ground Water Act raised, but not decided. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

An owner of land is not entitled to recover damages for barricade of a county road where he does not suffer an injury different in kind from the public at large. Fougeron v. County of Seward, 174 Neb. 753, 119 N.W.2d 298 (1963).

This section is self-executing. Legislative action is not necessary to make it available. Gentry v. State, 174 Neb. 515, 118 N.W.2d 643 (1962).

Rural Cemetery District Act violated this provision of the Constitution. Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535 (1961).

Weather Control Act of 1957 violated this section. Summerville v. North Platte Valley Weather Control Dist., 170 Neb. 46, 101 N.W.2d 748 (1960).

Filing of claim for damages under statute is not a condition precedent to maintenance of action. Armbruster v. Stanton-Pilger Drainage Dist., 165 Neb. 459, 86 N.W.2d 56 (1957).

Statute providing for appointment of district judges as appraisers in condemnation proceedings meets all the requirements of due process. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448 (1945).

Zoning ordinance sustained as constitutional. Dundee Realty Co. v. City of Omaha, 144 Neb. 448, 13 N.W.2d 634 (1944).

A private employment agency is not a business in which the public has such an interest that price fixing may properly be included as a method of regulation. Boomer v. Olsen, 143 Neb. 579, 10 N.W.2d 507 (1943).

Provision is self-executing and no waiver of immunity of state from suit is required. Bordy v. State, 142 Neb. 714, 7 N.W.2d 632 (1943).

Where a party having the right to condemn lands takes possession without instituting condemnation proceedings, the owner may waive this feature and recover compensation.

Dawson County Irr. Dist. v. Stuart, 142 Neb. 435, 8 N.W.2d 507 (1943).

In action against city for taking and damaging realty for public use without just compensation, it is not necessary that property owner plead or prove that she filed claim with city as provided by city charter. Bridge v. City of Lincoln, 138 Neb. 461, 293 N.W. 375 (1940).

Statute imposing restrictions regarding automobile brake and light equipment and providing for inspection, was not violative of constitutional provision. Beisner v. Cochran, 138 Neb. 445, 293 N.W. 289 (1940).

Housing authority acts did not violate constitutional provision prohibiting taking or damaging private property for public use without compensation. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

The Legislature cannot waive sovereignty of state in favor of a particular person or persons to permit suit against state for negligence of its agents and servants. Cox v. State, 134 Neb. 751, 279 N.W. 482 (1938).

Noisome odors from city sewage is not damaging of private property entitling owner to injunction where nuisance may be corrected by chemical treatment of sewage. Hall v. City of Friend, 134 Neb. 652, 279 N.W. 346 (1938).

Moratorium Law provided for the taking of private property for public use without just compensation. First Trust Co. of Lincoln v. Smith, 134 Neb. 84, 277 N.W. 762 (1938).

Where the state acquired legal title to mortgaged real estate it cannot be made defendant in foreclosure suit without its consent. Northwestern Mutual Life Ins. Co. v. Nordhues, 129 Neb. 379, 261 N.W. 687 (1935).

Suit against state for infringement of patent can not be brought in state court on theory that plaintiff's property is taken for public use without compensation. Thimgan v. State, 125 Neb. 696, 251 N.W. 837 (1933).

Where employees of the state enter upon land, against the will of the owner, under a void appraisement for damages and attempt to use his land for highway purposes without compensation paid or tendered, they may be restrained by injunction. Goergen v. Department of Public Works, 123 Neb. 648, 243 N.W. 886 (1932).

The Legislature has power to formulate, prescribe, enlarge, modify and alter remedies; provided, however, it does not, under the guise of a statute relating to procedure, attempt to deprive any person of a right secured by the Constitution. Croft v. Scotts Bluff County, 121 Neb. 343, 237 N.W. 149 (1931).

Zoning ordinance was valid under the police power, having substantial relation to the public health, safety and general welfare. City of Lincoln v. Foss, 119 Neb. 666, 230 N.W. 592 (1930).

Owner standing by and neglecting to assert constitutional rights while paving construction is going on, cannot enforce his constitutional rights by means of injunction in a court of equity when he has an adequate remedy at law. Meyer v. City of Alma, 117 Neb. 511, 221 N.W. 438

(1928).

The right of eminent domain cannot be exercised to take land against landowners consent as a site for a reservoir from which to irrigate private property. Vetter v. Broadhurst, 100 Neb. 356, 160 N.W. 109 (1916).

This section is self-executing, and it requires no legislation to prevent private property from being taken or damaged for public use without just compensation. Hopper v. Douglas County, 75 Neb. 329, 106 N.W. 330 (1905); Douglas County v. Taylor, 50 Neb. 535, 70 N.W. 27 (1897).

Mere passive acquiescence by landowner, unaccompanied by conduct indicating affirmative assent, is not waiver of right to compensation. Kime v. Cass County, 71 Neb. 677, 99 N.W. 546 (1904), affirmed on rehearing 71 Neb. 680, 101 N.W. 2 (1904).

Levying special assessments upon tracts of land adjacent to proposed drainage ditch for special benefits received does not violate this section. Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901).

It is not incumbent upon property owner to take affirmative action as condition precedent to protecting his rights. Propst v. Cass County, 51 Neb. 736, 71 N.W. 748 (1897).

Land is appropriated when its corpus is seized and devoted to an improvement so as to deprive owner of use, and it is not necessary that owner be divested of fee. Martin v. Fillmore County, 44 Neb. 719, 62 N.W. 863 (1895).

Legislature may regulate remedy and prescribe forms to be observed to enforce law, but such regulation must be reasonable and by general laws of uniform operation. City of Lincoln v. Grant, 38 Neb. 369, 56 N.W. 995 (1893).

Legislature has no power to take property of one citizen and transfer it to another, even when full compensation made. Jenal v. Green Island Draining Co., 12 Neb. 163, 10 N.W. 547 (1881).

Public cannot, by means of assessment of benefits against abutting property, reimburse itself for payment of damages occasioned by changing of street grade. Goodrich v. City of Omaha, 10 Neb. 98, 4 N.W. 424 (1880).

**I-22. Elections to be free.**

All elections shall be free; and there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise.

**Source:**Neb. Const. art. I, sec. 22 (1875).

**Annotation**

**1. Nominations**
**2. Miscellaneous**
**1. Nominations**
Legislature is authorized to establish different qualifications for voters in a school district

election. Farrell v. School Dist. No. 54 of Lincoln County, 164 Neb. 853, 84 N.W.2d 126 (1957).

Statute prohibiting state and federal officers and employees from being delegates to county, district, and state political conventions did not violate this section. State ex rel. Baldwin v. Strain, 152 Neb. 763, 42 N.W.2d 796 (1950).

This provision does not operate to circumscribe power of Legislature to define the method of effecting the appointment of presidential electors. State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).

Statutes regulating nomination and election of candidates and prescribing formation of new party are constitutional, if elections are left free and open to all electors. State ex rel. Nelson v. Marsh, 123 Neb. 423, 243 N.W. 277 (1932).

Statute providing for nomination of delegates to constitutional convention by petition only, does not infringe this section, which applies to elections and not to method of nomination. Baker v. Moorhead, 103 Neb. 811, 174 N.W. 430 (1919).

Legislature may regulate nomination of candidates provided regulations are reasonable and do not unnecessarily hamper or impede right of voter to vote for whomsoever he pleases. Morrissey v. Waite, 92 Neb. 271, 138 N.W. 186 (1912).

Statute describing form of official ballot but limiting candidates named thereon to nominees by petition, which has effect of depriving all electors excepting five hundred in each county of right to take part in nominating, violates Constitution. State ex rel Ragan v. Junkin, 85 Neb. 1, 122 N.W. 473 (1909).

Statute requiring candidates for primary elections to pay fee for filing nomination papers, computed at 1 per cent of emoluments received as salary by that officer, is in conflict with Constitution. State ex rel. Adair v. Drexel, 74 Neb. 776, 105 N.W. 174 (1905).

**2. Miscellaneous**

Because the right to participate in representative government is not implicated by a referendum proceeding, the constitutional right to vote is not violated by the Nebraska Constitution's limitations on the right to refer legislative enactments to the voters. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

The right to vote under this provision does not extend beyond issues involving the right to participate in representative government. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

This section has no application to a public corporation or political subdivision where it operates in a proprietary capacity. Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966).

The second reapportionment act enacted by the 1965 Legislature did not impede the right of a voter to exercise the elective franchise. Carpenter v. State, 179 Neb. 628, 139 N.W.2d 541 (1966).

Levy of tax for municipal university did not violate free elections clause. Ratigan v. Davis, 175 Neb. 416, 122 N.W.2d 12 (1963).

Holding an election shortly after a blizzard did not operate as a hindrance or impediment to the right to vote. Peterson v. Cook, 175 Neb. 296, 121 N.W.2d 399 (1963).

Requirement that candidate for office of member of State Railway Commission be not less than thirty years of age does not violate this section. State ex rel. Quinn v. Marsh, 141 Neb. 436, 3 N.W.2d 892 (1942).

Offer of federal government to aid in remodeling of schoolhouse does not invalidate school district election to vote bonds for that purpose. Taxpayers League v. Benthack, 136 Neb. 277, 285 N.W. 577 (1939).

Requirement of Australian Ballot Law that signatures of two judges of election shall be on back of each ballot, is not inimical to constitutional provisions. Swan v. Bowker, 135 Neb. 405, 281 N.W. 891 (1938).

A statute substituting a municipal court for justice of peace courts which excludes electors outside of city but within jurisdiction of municipal court from voting for municipal judge, contravenes constitutional provision. State ex rel. Wright v. Brown, 131 Neb. 239, 267 N.W. 466 (1936).

Statute prohibiting candidate defeated at primary from filing by petition in general election next following is constitutional. State ex rel. Driscoll v. Swanson, 127 Neb. 715, 256 N.W. 872 (1934).

Statute restricting the right to petition for recall of city officers to voters whose names appear upon the registration list is not violative of this section. State ex rel. Miller v. Berg, 97 Neb. 63, 149 N.W. 61 (1914).

Election commissioner is required to accept statements of voter under oath as true and register him as a voter. State ex rel. Williams v. Moorhead, 96 Neb. 559, 148 N.W. 552 (1914).

Following this section, the law makes county clerk liable to forfeit his office and to be fined and imprisoned if he neglects to furnish correct ballots. Wahlquist v. Adams County, 94 Neb. 682, 144 N.W. 171 (1913).

To preserve right of voter at general election, it is not necessary that name of candidate should appear on ballot more than once, nor that he be described as member of more than one political party, as no party can be compelled to put forth as its candidate one who does not affiliate with it. State ex rel. Curyea v. Wells, 92 Neb. 337, 138 N.W. 165 (1912).

The right of every voter to vote a straight ticket for the candidates of his party is guaranteed and any attempt by deception or otherwise to deprive him of that right is a violation of the Constitution. State ex rel. Nebraska Republican State Central Committee v. Wait, 92 Neb. 313, 138 N.W. 159 (1912).

Legislature may control and regulate official ballot and manner of selection of names to be

printed thereon, but cannot abolish nor prevent their formation, nor prevent free and open discussion of qualifications and fitness for office. State ex rel. Ragan v. Junkin, 85 Neb. 1, 122 N.W. 473 (1909).

In creation of drainage districts requirement that officers shall be elected by freeholders only does not violate Constitution. State ex rel. Harris v. Hanson, 80 Neb. 738, 117 N.W. 412 (1908).

Legislature may provide for election of officers not named in Constitution by means other than popular vote. State ex rel. Harris v. Hanson, 80 Neb. 724, 115 N.W. 294 (1908).

Where statutes require that ballot be signed by two judges of election, voter cannot be deprived of vote because some ballots were in good faith signed by clerk. Bingham v. Broadwell, 73 Neb. 605, 103 N.W. 323 (1905).

Electors of city cannot be deprived of right to vote for public officer because of failure of Legislature to make special provision for such election. State ex rel. Gordon v. Moores, 70 Neb. 48, 96 N.W. 1011 (1903), affirmed on rehearing 70 Neb. 56, 99 N.W. 504 (1904).

The requirements of the Australian Ballot Law that the names or signatures of the two judges of an election shall be written on the back of each ballot to be used, and that a ballot not so endorsed shall be void, and not counted, are mandatory, and are not inimical to constitutional provisions. Orr v. Bailey, 59 Neb. 128, 80 N.W. 495 (1899).

**I-23. Capital cases; right of direct appeal; effect; other cases; right of appeal.**

In all capital cases, appeal directly to the Supreme Court shall be as a matter of right and shall operate as a supersedeas to stay the execution of the sentence of death until further order of the Supreme Court. In all other cases, criminal or civil, an aggrieved party shall be entitled to one appeal to the appellate court created pursuant to Article V, section 1, of this Constitution or to the Supreme Court as may be provided by law.

**Source:**Neb. Const. art I, sec. 23 (1875); Amended 1972, Laws 1972, LB 196, sec. 1; Amended 1990, Laws 1990, LR 8, sec. 1.

**Annotation**

**1. Right of review**
**2. Regulation of exercise of right**
**3. Miscellaneous**
**1. Right of review**
Right to be heard on question of changes in boundaries of school district by error proceedings could not be denied. Languis v. De Boer, 181 Neb. 32, 146 N.W.2d 750 (1966).

Legislature cannot deprive courts of jurisdiction conferred on them by Constitution. Writ of prohibition is not abolished by statutory provisions. State ex rel. Wright v. Barney, 133 Neb. 676, 276 N.W. 676 (1937).

Right of review of judgment rendered party at open public hearing is guaranteed by Constitution. State ex rel. Sorensen v. Nemaha County Bank of Auburn, 124 Neb. 883, 248

N.W. 650 (1933).

Right of review is to be held inviolate. State v. Odd Fellows Hall Assn., 123 Neb. 440, 243 N.W. 616 (1932).

**2. Regulation of exercise of right**

This section of the Nebraska Constitution does not bar either the Legislature or the Supreme Court from making reasonable rules and regulations governing review on appeal. Nebraska State Bank v. Dudley, 203 Neb. 226, 278 N.W.2d 334 (1979).

Requirement for furnishing of appeal bond in probate matter did not deprive party of right to be heard in court of last resort. Rundall v. Whiteside, 182 Neb. 176, 153 N.W.2d 236 (1967).

Right to be heard in civil case in Supreme Court is dependent upon its exercise in strict conformity to law. Weiner v. State, 179 Neb. 297, 137 N.W.2d 852 (1965).

This section does not prohibit the Legislature from prescribing reasonable rules for review of cause on appeal. Barney v. Platte Valley Public Power & Irr. Dist., 144 Neb. 230, 13 N.W.2d 120 (1944).

Constitutional provision does not prohibit Legislature from prescribing reasonable rules and regulations for the review of a cause by appeal. In re Kothe's Estate, 131 Neb. 531, 268 N.W. 464 (1936).

Legislature may prescribe reasonable rules and regulations for review of case on appeal. In re Estate of Mathews, 125 Neb. 737, 252 N.W. 210 (1933).

Section does not prevent Supreme Court from making reasonable rules to facilitate procedure, nor prohibit Legislature from taking away one method of review, provided another adequate one is left. Schmidt v. Boyle, 54 Neb. 387, 74 N.W. 964 (1898).

Legislature is not prohibited from prescribing reasonable regulations, such as requiring appellant to give bond. School Dist. No. 6 of Cass County v. Traver, 43 Neb. 524, 61 N.W. 720 (1895).

**3. Miscellaneous**

The writ of error is a writ of right in all cases of felony. State v. Longmore, 178 Neb. 509, 134 N.W.2d 66 (1965).

Judicial discretion should be exercised to promote rather than to defeat right of review. Keil v. Farmers' Irr. Dist., 119 Neb. 503, 229 N.W. 898 (1930).

Statute denying right of review in mortgage foreclosure suit, where defendant files request for stay, will be strictly construed. Theisen v. Peterson, 114 Neb. 154, 206 N.W. 768 (1925).

Court of equity will grant new trial where party is deprived of right of review because, without his fault, he was unable to obtain bill of exceptions or transcript. Ferber v. Leise, 97 Neb. 795, 151 N.W. 307 (1915); Zweibel v. Caldwell, 72 Neb. 47, 99 N.W. 843 (1904), motion for rehearing overruled 72 Neb. 53, 102 N.W. 84 (1905).

Section does not give absolute right to oral argument, but was intended in sense of review. Schmidt v. Boyle, 54 Neb. 387, 74 N.W. 964 (1898).

**I-24. Repealed 1990. Laws 1990, LR 8, sec. 1.**

**I-25. Rights of property; no discrimination; aliens.**

There shall be no discrimination between citizens of the United States in respect to the acquisition, ownership, possession, enjoyment or descent of property. The right of aliens in respect to the acquisition, enjoyment and descent of property may be regulated by law.

**Source:**Neb. Const. art. I, sec. 25 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 2.

**Annotation**

**1. Discrimination**
**2. Rights of aliens**
**3. Miscellaneous**
**1. Discrimination**
Statute abrogating a right of action for a future tort does not violate this section. State Securities Co. v. Norfolk Livestock Sales Co., Inc., 187 Neb. 446, 191 N.W.2d 614 (1971).

Prohibiting wholesalers from giving discounts to retailers for quantity purchases of alcoholic liquor does not violate this section. Central Markets West, Inc. v. State, 186 Neb. 79, 180 N.W.2d 880 (1970).

Harm caused by statute permitting independent hospital district to fractionate territory of counties insufficient to constitute violation of this section. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

Prohibiting retailer from accepting credit for purchase of beer from wholesaler while permitting acceptance of credit on purchase of liquor is constitutional. Tom & Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).

A citizen may not only acquire property but he may sell it at such price as he can obtain in fair barter. Burger v. City of Beatrice, 181 Neb. 213, 147 N.W.2d 784 (1967).

Penalty for failure to return personal property for taxation was discriminatory and void under this section. Bachus v. Swanson, 179 Neb. 1, 136 N.W.2d 189 (1965).

Statute requiring fencing of right-of-way by railroads did not discriminate between citizens with respect to ownership and enjoyment of property. Linenbrink v. Chicago & N.W. Ry. Co., 177 Neb. 838, 131 N.W.2d 417 (1964).

Every citizen has the right to acquire property and sell it at such price as he can obtain in fair barter. Elder v. Doerr, 175 Neb. 483, 122 N.W.2d 528 (1963).

Levy of tax for municipal university did not violate discrimination clause. Ratigan v. Davis, 175 Neb. 416, 122 N.W.2d 12 (1963).

City ordinance prescribing charge for conducting business of commercial aerial spraying did not violate this section. City of Ord v. Biemond, 175 Neb. 333, 122 N.W.2d 6 (1963).

Penalty provisions of tax statute were discriminatory and violated this section. Creigh v. Larsen, 171 Neb. 317, 106 N.W.2d 187 (1960).

Amendments to Blue-Sky Law did not violate this section. Davis v. Walker, 170 Neb. 891, 104 N.W.2d 479 (1960).

Public Auction Law was discriminatory and not based upon reasonable classification. Blauvelt v. Beck, 162 Neb. 576, 76 N.W.2d 738 (1956).

Curb-cut ordinance admitted by demurrer to be discriminatory and not a reasonable exercise of police power violated this section. Panebianco v. City of Omaha, 151 Neb. 463, 37 N.W.2d 731 (1949).

Imposition of liability for reimbursement on estate of recipient of old age assistance does not violate this section. Boone County Old Age Assistance Board v. Myhre, 149 Neb. 669, 32 N.W.2d 262 (1948).

A private employment agency is not a business in which the public has such an interest that price fixing may properly be included as a method of regulation. Boomer v. Olsen, 143 Neb. 579, 10 N.W.2d 507 (1943).

Housing Authority Act sustained as constitutional. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

Limitation on lawful business creating a monopoly violates this section. Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388 (1939).

Regulation of size of containers in which alcoholic liquors are sold at retail is not violative of this section. Marsh & Marsh v. Carmichael, 136 Neb. 797, 287 N.W. 616 (1939).

The constitutional right to acquire and possess property includes the right to dispose of it in such innocent manner as the owner pleases. State ex rel. English v. Ruback, 135 Neb. 335, 281 N.W. 607 (1938).

Zoning ordinance was not discriminatory. City of Lincoln v. Foss, 119 Neb. 666, 230 N.W. 592 (1930).

Statute providing for tuberculin test making distinction between breeding cattle and feeding cattle and authorizing summary destruction of diseased animals, is constitutional. State ex rel. Spillman v. Splittgerber, 119 Neb. 436, 229 N.W. 332 (1930).

Former statute prohibiting trial of divorce suit within six months after service of summons is not violative of this section. Garrett v. State, 118 Neb. 373, 224 N.W. 860 (1929).

Occupation tax on "rolling store" was not discriminatory. Erwin v. City of Omaha, 118 Neb. 331, 224 N.W. 692 (1929).

"Cedar Rust" law is constitutional. Upton v. Felton, 4 F.Supp. 585 (D. Neb. 1932).

**2. Rights of aliens**

Provision precluding distinction between resident aliens and citizens was inapplicable to nonresident wife of resident alien. Engen v. Union State Bank of Harvard, 121 Neb. 257, 236 N.W. 741 (1931).

Legislature did not intend by Alien Act of 1889 to discriminate against the heirs of a resident alien in favor of the heirs of a nonresident. State ex rel. Toop v. Thomas, 103 Neb. 151, 172 N.W. 690 (1919).

Statutes limiting right of dower of nonresident widow to lands of which husband died seized, while extending right of dower to resident widow of other lands, does not violate Constitution. Miner v. Morgan, 83 Neb. 400, 119 N.W. 781 (1909).

The words "aliens" and "citizens" relate to political status of persons as respecting their relation to United States, while the word "residents" relates to status of persons with respect to State of Nebraska. Glynn v. Glynn, 62 Neb. 872, 87 N.W. 1052 (1901).

Statute denying aliens the right to take or hold title to real estate in Nebraska by descent or devise, with certain exceptions and qualifications, does not violate this section. Toop v. Ulysses Land Co., 278 F. 840 (D. Neb. 1913).

**3. Miscellaneous**

This provision of the Nebraska Constitution is no more demanding than the Equal Protection Clause of the U.S. Constitution. Mach v. County of Douglas, 259 Neb. 787, 612 N.W.2d 237 (2000).

## I-26. Powers retained by people.

This enumeration of rights shall not be construed to impair or deny others, retained by the people, and all powers not herein delegated, remain with the people.

**Source:**Neb. Const. art. I, sec. 26 (1875).

**Annotation**

L.B. 1003, Eighty-second Legislature, First Session, sections 23-2601 to 23-2612 does not contravene this section. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

A state agency may not, by invoking the doctrine of police power, exercise powers not granted it by and inconsistent with provisions of the state Constitution. First Trust Co. of Lincoln v. Smith, 134 Neb. 84, 277 N.W. 762 (1938).

This section is characteristic of republican form of government and distinguishes such government from monarchy or oligarchy. State ex rel. Harte v. Moorhead, 99 Neb. 527, 156 N.W. 1067 (1916).

This section removes all doubt that powers other than those specified in bill of rights were retained by the people, and any act in violation of such rights is as clearly invalid as though same had been expressly prohibited by fundamental law. State ex rel. Smyth, Attorney General v. Moores, 55 Neb. 480, 76 N.W. 175 (1898), overruled in Redell v. Moores, 63 Neb. 219, 88 N.W. 243 (1901).

Police power is one of the powers which has been reserved by the people of the state, and which cannot be surrendered. Chicago, B. & Q. R. R. Co. v. State ex rel. City of Omaha, 47 Neb. 549, 66 N.W. 624 (1896).

**I-27. English language to be official.**

The English language is hereby declared to be the official language of this state, and all official proceedings, records and publications shall be in such language, and the common school branches shall be taught in said language in public, private, denominational and parochial schools.

**Source:**Neb. Const. art. I, sec. 27 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 3.

**I-28. Crime victims; rights enumerated; effect; Legislature; duties.**

(1) A victim of a crime, as shall be defined by law, or his or her guardian or representative shall have: The right to be informed of all criminal court proceedings; the right to be present at trial unless the trial court finds sequestration necessary for a fair trial for the defendant; and the right to be informed of, be present at, and make an oral or written statement at sentencing, parole, pardon, commutation, and conditional release proceedings. This enumeration of certain rights for crime victims shall not be construed to impair or deny others provided by law or retained by crime victims.

(2) The Legislature shall provide by law for the implementation of the rights granted in this section. There shall be no remedies other than as specifically provided by the Legislature for the enforcement of the rights granted by this section.

(3) Nothing in this section shall constitute a basis for error in favor of a defendant in any criminal proceeding, a basis for providing standing to participate as a party to any criminal proceeding, or a basis to contest the disposition of any charge.

**Source:**Neb. Const. art. I, sec. 28 (1996); Adopted 1996, Laws 1995, LR 21CA, sec. 1.

**Annotation**

This provision is not self-executing. Legislative action is necessary to provide for the implementation of the rights provided herein. State ex rel. Lamm v. Nebraska Bd. of Pardons, 260 Neb. 1000, 620 N.W.2d 763 (2001).

**I-29. Marriage; same-sex relationships not valid or recognized.**

Only marriage between a man and a woman shall be valid or recognized in Nebraska. The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska.

**Source:**Neb. Const. art. I, sec. 29 (2000); Adopted 2000, Initiative Measure No. 416.

**I-30. Discrimination or grant of preferential treatment prohibited; public employment, public education, or public contracting; section, how construed; remedies.**

(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (2) This section shall apply only to action taken after the section's effective date. (3) Nothing in this section prohibits bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting. (4) Nothing in this section shall invalidate any court order or consent decree that is in force as of the effective date of this section. (5) Nothing in this section prohibits action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state. (6) For purposes of this section, state shall include, but not be limited to: (a) the State of Nebraska; (b) any agency, department, office, board, commission, committee, division, unit, branch, bureau, council, or sub-unit of the state; (c) any public institution of higher education; (d) any political subdivision of or within the state; and (e) any government institution or instrumentally of or within the state. (7) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Nebraska's antidiscrimination law. (8) This section shall be self executing. If any part or parts of this section are found to be in conflict with federal law or the Constitution of the United States, this section shall be implemented to the maximum extent that federal law and the Constitution of the United States permit. Any provision held invalid shall be severable from the remaining portions of this section.

**Source:**Neb. Const. art. I, sec. 30 (2008); Adopted 2008, Initiative Measure No. 424.

**II-1. Legislative, executive, judicial.**

(1) The powers of the government of this state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others except as expressly directed or permitted in this Constitution.

(2) Notwithstanding the provisions of subsection (1) of this section, supervision of individuals sentenced to probation, released on parole, or enrolled in programs or services established within a court may be undertaken by either the judicial or executive department, or jointly, as provided by the Legislature.

**Source:**Neb. Const. art. II, sec. 1 (1875); Amended 2006, Laws 2006, LR 274CA, sec. 1.

**Annotation**



**1. Legislative power**

The Legislature may not delegate its lawmaking function to the executive or judicial branches. In re Petition of Nebraska Community Corr. Council, 274 Neb. 225, 738 N.W.2d 850 (2007).

An executive agency decision which is a legislative act encroaches upon and interferes with legislative powers that cannot be delegated to an executive agency. Such unilateral action by an agency violates the language of this provision. Clemens v. Harvey, 247 Neb. 77, 525 N.W.2d 185 (1994).

A grant of administrative authority is not an unconstitutional delegation of legislative power. Blackledge v. Richards, 194 Neb. 188, 231 N.W.2d 319 (1975).

Sections 77-202.25 to 77-202.33 do not constitute an appropriation and are not violative hereof. Stahmer v. State, 192 Neb. 63, 218 N.W.2d 893 (1974).

Sections 79-486 and 79-4,102 do not unlawfully delegate legislative authority and are not unconstitutional. Mann v. Wayne County Board of Equalization, 186 Neb. 752, 186 N.W.2d 729 (1971).

Legislature cannot through appropriations exercise or invade constitutional rights or powers of executive. Legislature cannot administer appropriations once made. State ex rel. Meyer v. State Board of Equalization & Assessment, 185 Neb. 490, 176 N.W.2d 920 (1970).

Nebraska Revenue Act of 1967 was not an unlawful delegation of legislative power to the United States. Anderson v. Tiemann, 182 Neb. 393, 155 N.W.2d 322 (1967).

Legislature may not delegate or impose legislative functions upon judicial department. McDonald v. Rentfrow, 176 Neb. 796, 127 N.W.2d 480 (1964).

Grant of legislative power to Department of Education was an exception expressly authorized by Constitution. School Dist. No. 8 of Sherman County v. State Board of Education, 176 Neb. 722, 127 N.W.2d 458 (1964).

Legislature, in creating an administrative body, cannot delegate power which is conferred solely upon the Legislature. Terry Carpenter, Inc. v. Nebraska Liquor Control Commission, 175 Neb. 26, 120 N.W.2d 374 (1963).

Legislature has power to confirm appointments to public office. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

Delegation of rule-making power to Superintendent of Public Instruction, without adequate standards, violated this section. School Dist. No. 39 of Washington County v. Decker, 159 Neb. 693, 68 N.W.2d 354 (1955).

Delegation of legislative powers to a county committee to fix boundaries of school district was constitutional. Nickel v. School Board of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953).

Legislature could delegate to Board of Regents authority to make rules for efficient operation of University Hospital. Board of Regents v. County of Lancaster, 154 Neb. 398, 48 N.W.2d 221 (1951).

Reclamation Act did not violate this section. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

Housing authority acts granting administrative functions to city council were not unconstitutional delegation of legislative authority. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

Legislature has no power to delegate legislative authority to an administrative board or to outside agency such as United States Congress. Smithberger v. Banning, 129 Neb. 651, 262 N.W. 492 (1935).

Statute regulating size of loaf of bread, authorizing Secretary of Agriculture to fix reasonable excess tolerances, is not invalid as a delegation of legislative power. Petersen Baking Co. v. Bryan, 124 Neb. 464, 247 N.W. 39 (1933), affirmed in 290 U.S. 570 (1934).

Act providing for control and eradication of diseases among domestic animals does not delegate legislative power, and is not invalid. State ex rel. Sorensen v. Knudtsen, 121 Neb. 270, 236 N.W. 696 (1931).

Governor, in submitting budget recommendations and in acting on appropriation bills, is in performance of "legislative duties" within meaning hereof. Elmen v. State Board of Equalization and Assessment, 120 Neb. 141, 231 N.W. 772 (1930).

Proviso of law relating to organization of new school districts was unconstitutional as attempting to delegate legislative functions to private persons. Rowe v. Ray, 120 Neb. 118, 231 N.W. 689 (1930).

Duty placed on administrative board to provide form of insurance contract was not an unconstitutional delegation of legislative power. State ex rel. Martin v. Howard, 96 Neb. 278, 147 N.W. 689 (1914).

Statute providing for direct appeals to Supreme Court from Railway Commission is not invalid as attempting to confer legislative power on court. Hooper Tel. Co. v. Nebraska Tel. Co., 96 Neb. 245, 147 N.W. 674 (1914).

This section prohibits attempting to confer upon district court legislative authority to sever agricultural lands from municipal limits. Winkler v. City of Hastings, 85 Neb. 212, 122 N.W. 858 (1909).

Making it discretionary in district court to determine necessity for calling grand jury does not confer legislative powers upon judiciary. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

**2. Executive power**

The Board of Nursing has power to deny a license upon proof applicant is guilty of unprofessional conduct, and upon review de novo, district court may not substitute its own judgment on that issue. Scott v. State ex rel. Board of Nursing, 196 Neb. 681, 244 N.W.2d 683 (1976).

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. American Fed. of S., C. & M. Emp. v. Department of Public Institutions, 195 Neb. 253, 237 N.W.2d 841 (1976).

Adoption of existing law or regulation by reference does not delegate legislative power to administrative officer to create criminal offenses. State v. Workman, 186 Neb. 467, 183 N.W.2d 911 (1971).

Statute authorizing transfer of land from a nonaccredited to an accredited high school district did not violate this section. De Jonge v. School Dist. of Bloomington, 179 Neb. 539, 139 N.W.2d 296 (1966).

Regulation of Nebraska Liquor Control Commission fixing hours for sale of beer outside corporate limits of cities and villages did not violate this section. Griffin v. Gass, 133 Neb. 56, 274 N.W. 193 (1937).

Powers of State Board of Agriculture are neither legislative nor judicial. Crete Mills v. Nebraska State Board of Agriculture, 132 Neb. 244, 271 N.W. 684 (1937).

Legislature may not impose judicial power upon executive officers or delegate legislative power to them. Laverty v. Cochran, 132 Neb. 118, 271 N.W. 354 (1936).

Act requiring county attorney to perform duties of coroner is not invalid as clothing administrative officer with judicial power. State ex rel. Crosby v. Moorhead, 100 Neb. 298, 159 N.W. 412 (1916).

Act authorizing chief officer of state department or institution to employ attorney, rather than to have Attorney General act, is not invalid. Follmer v. State, 94 Neb. 217, 142 N.W. 908 (1913).

Ministerial officers, such as board of education, while not exactly executive or political, are obviously more nearly related to executive than to legislative or judicial department. State v. Loechner, 65 Neb. 814, 91 N.W. 874 (1902).

Attempt to confer upon courts authority to remove police magistrates for misconduct in office was unlawful delegation of executive power. Gordon v. Moores, 61 Neb. 345, 85 N.W. 298 (1901).

By quo warranto proceeding court does not exercise nor assume to exercise any power belonging to executive department. State ex rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739 (1891), 51 N.W. 602 (1892), reversed in Boyd v. Nebraska ex rel. Thayer 143 U.S. 135 (1892).

**3. Judicial power**

This provision of the Nebraska Constitution prohibits the Legislature from mandating that the Supreme Court adopt sentencing guidelines for felony drug offenses. In re Petition of Nebraska Community Corr. Council, 274 Neb. 225, 738 N.W.2d 850 (2007).

The Nebraska Supreme Court is vested with the sole power to admit persons to the practice of law in this state and to fix qualifications for admission to the Nebraska bar. In re Application of Brown, 270 Neb. 891, 708 N.W.2d 251 (2006).

A trial court that indicates it will concur in an agreement granting sentence concessions is not bound and has not ceded its authority and, thus, has not violated the doctrine of the separation of powers. State v. Lotter, 255 Neb. 456, 586 N.W.2d 591 (1998).

Although courts have no jurisdiction to review wholly legislative acts, some agency determinations possess quasi-judicial characteristics and are reviewable without violating the separations of powers doctrine. Slack Nsg. Home v. Department of Soc. Servs., 247 Neb. 452, 528 N.W.2d 285 (1995).

The Nebraska Supreme Court, and only that court, is invested with the power to admit persons to the practice of law and to fix qualifications for admission to the bar. Thus, it has the responsibility to adopt and implement systems designed to protect the public and safeguard the judicial system by assuring that those admitted to the bar are of such character and fitness as to be worthy of the trust and confidence such admission implies. In re Application of Majorek, 244 Neb. 595, 508 N.W.2d 275 (1993).

The discretion vested in a prosecuting attorney to determine in which court a minor shall be prosecuted does not violate this section as an unlawful delegation of legislative power. State v. Grayer, 191 Neb. 523, 215 N.W.2d 859 (1974).

Legislative act attempting to confer upon the courts the power of determining what lands should be annexed to a city violated this section. Williams v. County of Buffalo, 181 Neb. 233, 147 N.W.2d 776 (1967).

Legislature may confer upon the courts the power to review action taken by county board of equalization in levying taxes. C. R. T. Corp. v. Board of Equalization, 172 Neb. 540, 110 N.W.2d 194 (1961).

Motor Vehicle Safety Responsibility Act does not confer judicial powers on Department of Roads and Irrigation. Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952).

Under separation of powers of government, judiciary has the inherent right to admit attorneys to practice law and prescribe their qualifications, and while Legislature may impose minimum standards as an exercise of the police power, the judiciary is not required to accept lower standards than it prescribes. State ex rel. Ralston v. Turner, 141 Neb. 556, 4 N.W.2d 302 (1942).

Power to admit persons to practice of law and fix their qualifications to practice is vested solely in Supreme Court. State ex rel. Wright v. Hinckle 137 Neb. 735, 291 N.W. 68 (1940).

Statute conferring powers over solvent and insolvent banks on Department of Banking is not unconstitutional as attempt to delegate judicial powers to the department. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

The right to define and regulate the practice of law belongs to the judicial department of government. In re Integration of the Nebraska State Bar Association, 133 Neb. 283, 275 N.W. 265 (1937).

The Supreme Court has no power to regulate public utilities. Furstenberg v. Omaha & C. B. St.

Ry. Co., 132 Neb. 562, 272 N.W. 756 (1937).

Power to admit persons to practice law in this state and to fix their qualifications is vested solely in the Supreme Court. State ex rel. Wright v. Barlow, 131 Neb. 294, 268 N.W. 95 (1936).

Statute providing for assignment of district judges as appraisers in condemnation proceedings is not unconstitutional delegation of power hereunder. City of Mitchell v. Western Public Service Co., 124 Neb. 248, 246 N.W. 484 (1933).

Judicial department of government must protect its jurisdiction at boundaries of power fixed by the Constitution. State ex rel. Sorensen v. Mitchell State Bank, 123 Neb. 120, 242 N.W. 283 (1932); State ex rel. Sorensen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

Statute relating to declaratory judgments is valid since it does not confer nonjudicial powers on courts. Lynn v. Kearney County, 121 Neb. 122, 236 N.W. 192 (1931).

Power conferred on Supreme Court Justice to require filing of nomination acceptance is judicial, not quasi political or administrative. State ex rel. Meissner v. McHugh, 120 Neb. 356, 233 N.W. 1 (1930).

Statute requiring court to determine whether power district should be incorporated, what its boundaries should be, etc., is invalid as imposing nonjudicial duties. Searle v. Yensen, 118 Neb. 835, 226 N.W. 464 (1929).

Statute making federal census reports basis for determining population of subdivisions of state is void as usurping judicial power. Gordon v. Lowry, 116 Neb. 359, 217 N.W. 610 (1928).

Appointment by Supreme Court of district judges to appraise public utility does not violate this section. In re Appraisement of Omaha Gas Plant, 102 Neb. 782, 169 N.W. 725 (1918).

Statute vesting in district court duty of ordering annexation or disconnecting territory from municipal limits upon determination of existence of required facts does not violate Constitution. Bisenius v. City of Randolph, 82 Neb. 520, 118 N.W. 127 (1908).

Statute providing for appointment of municipal park commissioners by judges of district court is void as violating Constitution. State ex rel. Thompson v. Neble and Latenser, 82 Neb. 267, 117 N.W. 723 (1908).

Statute cannot vest judiciary with legislative functions under subterfuge of giving court jurisdiction over such questions on appeal. Tyson v. Washington County, 78 Neb. 211, 110 N.W. 634 (1907).

Creation of State Banking Board with regulatory power over banking corporations does not vest such board with judicial powers in violation of this article. State ex rel. Prout v. N. W. Trust Co., 72 Neb. 497, 101 N.W. 14 (1904).

Issuance of writ of mandamus by judicial branch directing performance of duty by member of executive department does not violate this section. State ex rel. Wright v. Savage, 64 Neb. 684, 90 N.W. 898 (1902), modified on rehearing 64 Neb. 702, 91 N.W. 557 (1902).

Supreme Court, on appeal from State Board of Equalization involving valuation and assessment of railroad property, acts in judicial and not in administrative capacity. Chicago & N. W. Ry. Co. v. Bauman, 69 F.2d 171 (8th Cir. 1934).

**4. Miscellaneous**

In Nebraska, the distribution of powers clause prohibits one branch of government from exercising the duties of another branch. Nebraska Coalition for Ed. Equity v. Heineman, 273 Neb. 531, 731 N.W.2d 164 (2007).

Nebraska's separation of powers clause prohibits the three governmental branches from exercising the duties and prerogatives of another branch and prohibits a branch from improperly delegating its own duties and prerogatives, except as the constitution directs or permits. In re Petition of Nebraska Community Corr. Council, 274 Neb. 225, 738 N.W.2d 850 (2007).

The distribution of powers clause prohibits one branch of government from exercising the duties of another. State v. Divis, 256 Neb. 328, 589 N.W.2d 537 (1999).

The powers of the state government are separated into three distinct departments, none of which shall exercise the powers belonging to the others. State v. Bainbridge, 249 Neb. 260, 543 N.W.2d 154 (1996).

This provision separates the powers of state government into three distinct departments, none of which shall exercise the powers belonging to the others. State v. Jones, 248 Neb. 117, 532 N.W.2d 293 (1995).

This provision, which distributes state governmental powers to the legislative, judicial, and executive branches, does not apply to the governing bodies of municipalities. Howard v. City of Lincoln, 243 Neb. 5, 497 N.W.2d 53 (1993).

This provision prohibits one branch of government from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives, and prohibits one who exercises the powers of one branch from being a member of one of the other branches. An employee of a state college is a member of the executive branch of government. An individual cannot simultaneously hold a position as an assistant professor at a state college and serve in the Legislature. State ex rel. Spire v. Conway, 238 Neb. 766, 472 N.W.2d 403 (1991).

Act establishing Court of Industrial Relations does not violate any constitutional provision and the standards for its guidance are adequate. Orleans Education Assn. v. School Dist. of Orleans, 193 Neb. 675, 229 N.W.2d 172 (1975).

The provision authorizing an Industrial Commission is an independent part of the Constitution and not an amendment to Article II. School Dist. of Seward Education Assn. v. School Dist. of Seward, 188 Neb. 772, 199 N.W.2d 752 (1972).

Provision in Nebraska Clean Waters Commission Act regarding appointment of trustees construed so as not to violate this section. State ex rel. Meyer v. Duxbury, 183 Neb. 302, 160 N.W.2d 88 (1968).

Airport Authority Act did not violate this section. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

Statute providing that judicial determination that legislative act is unconstitutional shall have prospective effect only held to be in violation of this section. Davis v. General Motors Acceptance Corp., 176 Neb. 865, 127 N.W.2d 907 (1964).

Statute authorizing paving in city of the second class did not delegate legislative functions to private individuals. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

Grade A Milk Act was unconstitutional as conferring legislative power upon administrative officer. Lincoln Dairy Co. v. Finigan, 170 Neb. 777, 104 N.W.2d 227 (1960).

Powers of government are divided into three distinct departments, the legislative, the executive and the judicial. State ex rel. Howard v. Marsh, 146 Neb. 750, 21 N.W.2d 503 (1946).

Appointment of district judges as appraisers in condemnation proceedings does not violate the doctrine of separation of powers. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448 (1945).

Requirement that candidate for office of member of State Railway Commission be not less than thirty years of age does not violate this section. State ex rel. Quinn v. Marsh, 141 Neb. 436, 3 N.W.2d 892 (1942).

Purpose of section was to establish and maintain the independence of the three branches of government. State ex rel. Randall v. Hall, 125 Neb. 236, 249 N.W. 756 (1933).

This section concerns only government of state and does not attempt to limit Legislature in prescribing manner in which municipalities may administer local affairs. State ex rel. Baughn v. Ure, 91 Neb. 31, 135 N.W. 224 (1912).

**III-1. Legislative authority; how vested; power of initiative; power of referendum.**

The legislative authority of the state shall be vested in a Legislature consisting of one chamber. The people reserve for themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls, independent of the Legislature, which power shall be called the power of initiative. The people also reserve power at their own option to approve or reject at the polls any act, item, section, or part of any act passed by the Legislature, which power shall be called the power of referendum.

**Source:**Neb. Const. art. III, sec. 1 (1875); Amended 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1934, Initiative Measure No. 330; Amended 2000, Laws 1999, LR 18CA, sec. 3.

**Annotation**

**1. Grant of power**
**2. Limitations on exercise of power**
**3. Delegation of power**
**4. Miscellaneous**

**1. Grant of power**
The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. American Fed. of S., C. & M. Emp. v. Department of Public Institutions, 195 Neb. 253, 237 N.W.2d 841 (1976).

A grant of administrative authority is not an unconstitutional delegation of legislative power. Blackledge v. Richards, 194 Neb. 188, 231 N.W.2d 319 (1975).

The right of the people to exercise the initiative and referendum is specifically reserved to them. Klosterman v. Marsh, 180 Neb. 506, 143 N.W.2d 744 (1966).

The Legislature, subject only to the initiative and referendum, and constitutional inhibitions, and provided that legislation is for a public purpose, has an unlimited field within which to legislate. Power Oil Co. v. Cochran, 138 Neb. 827, 295 N.W. 805 (1941).

Right of local self-government in cities and towns existed prior to present Constitution, is vested in people of respective municipalities, and cannot be taken away by Legislature. State ex rel. Smyth, Attorney General v. Moores, 55 Neb. 480, 76 N.W. 175 (1898), overruled in Redell v. Moores, 63 Neb. 219, 88 N.W. 243 (1901).

**2. Limitations on exercise of power**
Under this provision, a legislature may not attempt to restrict the constitutional power of a succeeding legislature to legislate. State ex rel. Stenberg v. Moore, 249 Neb. 589, 544 N.W.2d 344 (1996).

In the creation of a new executive department, a two-thirds majority of all members elected to the Legislature is required. State ex rel. Howard v. Marsh, 146 Neb. 750, 21 N.W.2d 503 (1946).

Restrictions and limitations of the Constitution apply with equal force to legislative proceedings under the unicameral system as they did under the bicameral system. Mekota v. State Board of Equalization & Assessment, 146 Neb. 370, 19 N.W.2d 633 (1945).

Constitution does not define, but limits, the powers of the Legislature; otherwise as to powers of city council under home rule charter. Consumers Coal Co. v. City of Lincoln, 109 Neb. 51, 189 N.W. 643 (1922).

The 1934 amendment to this section giving all legislative powers to the Unicameral applied to Article IV, section 15, of the Constitution so as to require all orders, resolutions, and votes of the one house Legislature to be presented to the Governor and this controlled procedure as to the 1969 resolution retroceding jurisdiction over Indian reservations. Omaha Tribe of Nebraska v. Village of Walthill, 334 F.Supp. 823 (D. Neb. 1971).

**3. Delegation of power**
The power of the Legislature to create a body with power to deal with labor relations of governmental entities and departments does not depend upon Article XV, section 9, of the Nebraska Constitution, but it exists by virtue of Article III, section 1. Orleans Education Assn. v. School Dist. of Orleans, 193 Neb. 675, 229 N.W.2d 172 (1975).

Sections 79-486 and 79-4,102 do not unlawfully delegate legislative authority and are not

unconstitutional. Mann v. Wayne County Board of Equalization, 186 Neb. 752, 186 N.W.2d 729 (1971).

Adoption of existing law or regulation by reference does not delegate legislative power to administrative officer to create criminal offenses. State v. Workman, 186 Neb. 467, 183 N.W.2d 911 (1971).

Nebraska Clean Waters Commission Act did not delegate legislative authority in violation of this section. State ex rel. Meyer v. Duxbury, 183 Neb. 302, 160 N.W.2d 88 (1968).

Nebraska Revenue Act of 1967 was not an unlawful delegation of legislative power to the United States. Anderson v. Tiemann, 182 Neb. 393, 155 N.W.2d 322 (1967).

Statute authorizing transfer of land from a nonaccredited to an accredited high school district did not violate this section. De Jonge v. School Dist. of Bloomington, 179 Neb. 539, 139 N.W.2d 296 (1966).

Legislature cannot delegate to administrative agency powers conferred solely upon Legislature. Terry Carpenter, Inc. v. Nebraska Liquor Control Commission, 175 Neb. 26, 120 N.W.2d 374 (1963).

Legislature cannot delegate its legislative power to define a criminal offense to an administrative or executive authority. Lincoln Dairy Co. v. Finigan, 170 Neb. 777, 104 N.W.2d 227 (1960).

Fair Trade Act was an unconstitutional delegation of legislative authority. McGraw Electric Co. v. Lewis & Smith Drug Co., Inc., 159 Neb. 703, 68 N.W.2d 608 (1955).

In absence of adequate standards, delegation of rule-making power to Superintendent of Public Instruction was unconstitutional. School Dist. No. 39 of Washington County v. Decker, 159 Neb. 693, 68 N.W.2d 354 (1955).

Legislature can delegate to administrative agency power to make rules and regulations covering the details of the legislative purpose. Board of Regents v. County of Lancaster, 154 Neb. 398, 48 N.W.2d 221 (1951).

Reclamation Act did not violate this section. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

Housing authority acts granting administrative functions to city council are not unconstitutional delegation of authority. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

The extraordinary session of the Legislature of 1935 was properly constituted. Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317 (1936).

The Legislature may not delegate legislative powers to an administrative board or to any outside agency such as the United States Congress. Smithberger v. Banning, 129 Neb. 651, 262 N.W. 492 (1935).

Proviso of law relating to organization of new school districts is not invalid as attempt to delegate legislative functions. Rowe v. Ray, 120 Neb. 118, 231 N.W. 689 (1930).

**4. Miscellaneous**

Act establishing Court of Industrial Relations does not violate any constitutional provision and the standards for its guidance are adequate. Orleans Education Assn. v. School Dist. of Orleans, 193 Neb. 675, 229 N.W.2d 172 (1975).

L.B. 1003, Eighty-second Legislature, First Session, sections 23-2601 to 23-2612 does not contravene this section. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

Rural Cemetery District Act violated this provision of the Constitution. Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535 (1961).

Conditions and restrictions upon former Bicameral Legislature apply to the Unicameral Legislature. State ex rel. Caldwell v. Peterson, 153 Neb. 402, 45 N.W.2d 122 (1950).

Constitution relating to referendum contemplates that actions brought under law be speedily disposed of so that elections be had at time specified. Barkley v. Pool, 102 Neb. 799, 169 N.W. 730 (1918).

Office created by Legislature may be abolished by it. State ex rel. Topping v. Houston, 94 Neb. 445, 143 N.W. 796 (1913).

**III-2. First power reserved; initiative.**

The first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature. This power may be invoked by petition wherein the proposed measure shall be set forth at length. If the petition be for the enactment of a law, it shall be signed by seven percent of the registered voters of the state, and if the petition be for the amendment of the Constitution, the petition therefor shall be signed by ten percent of such registered voters. In all cases the registered voters signing such petition shall be so distributed as to include five percent of the registered voters of each of two-fifths of the counties of the state, and when thus signed, the petition shall be filed with the Secretary of State who shall submit the measure thus proposed to the electors of the state at the first general election held not less than four months after such petition shall have been filed. The same measure, either in form or in essential substance, shall not be submitted to the people by initiative petition, either affirmatively or negatively, more often than once in three years. If conflicting measures submitted to the people at the same election be approved, the one receiving the highest number of affirmative votes shall thereby become law as to all conflicting provisions. The constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative. Initiative measures shall contain only one subject. The Legislature shall not amend, repeal, modify, or impair a law enacted by the people by initiative, contemporaneously with the adoption of this initiative measure or at any time thereafter, except upon a vote of at least two-thirds of all the members of the Legislature.

**Source:**Neb. Const. art. III, sec. 1A (1912); Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended

1920, Constitutional Convention, 1919-1920, No. 4; Amended 1988, Laws 1988, LR 248, sec. 1; Amended 1998, Laws 1997, LR 32CA, sec. 1; Amended 2004, Initiative Measure No. 418, sec. 1.

**Annotation**

**1. Procedure**
**2. Amendment by initiative**
**3. Miscellaneous**

**1. Procedure**

In order to qualify for the ballot, a petition to amend Nebraska's Constitution must be signed by 10 percent of the registered voters of the state. State ex rel. Bellino v. Moore, 254 Neb. 385, 576 N.W.2d 793 (1998).

Article III, section 2, which refers to registered voters repeals the reference in article III, section 4, which refers to those voting in the preceding gubernatorial election. The number of signatures required for placement of an initiative petition on the ballot by the Nebraska Constitution is equal to 10 percent of the number of registered voters on the date the signatures are to be turned in. Duggan v. Beermann, 245 Neb. 907, 515 N.W.2d 788 (1994).

This section is satisfied by a filing on July 5 for a general election to be held November 5. State ex rel. Morris v. Marsh, 183 Neb. 521, 162 N.W.2d 262 (1968).

Provision that election on initiative shall be submitted at next general election is not mandatory. If court proceedings require, election may be at subsequent general election. Barkley v. Pool, 102 Neb. 799, 169 N.W. 730 (1918).

Initiative procedure did not constitute adequate remedy to correct existing inequalities in apportionment of legislative districts. League of Nebraska Municipalities v. Marsh, 209 F.Supp. 189 (D. Neb. 1962).

**2. Amendment by initiative**

An appellate court makes no attempt to judge the wisdom or the desirability of enacting initiative amendments. State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).

The people of this state may amend their Constitution in any way they see fit, provided the amendments do not violate the federal Constitution or conflict with federal statutes or treaties. State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).

In a case involving the people's amendment to this state's Constitution, the Supreme Court makes no attempt to judge the wisdom or the desirability in enacting such amendments. Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

**3. Miscellaneous**

Provisions in a statute making it a criminal offense for a person to willfully and knowingly circulate a petition outside the county in which the person is registered to vote, and providing that signatures secured in such a manner shall not be counted, unnecessarily obstruct the people's right to participate in the initiative and referendum process and are therefore unconstitutional. A law which unnecessarily obstructs or impedes operation of the initiative and referendum process is unconstitutional. State ex rel. Stenberg v. Beermann, 240 Neb. 754, 485

N.W.2d 151 (1992).

Article III, sections 2 and 4, of the Constitution of the State of Nebraska set out some of the procedural requirements that must be met before an enactment initiated by a petition becomes a part of the statutory law of Nebraska or a part of the Nebraska Constitution. The people of Nebraska have specifically reserved the right to amend their Constitution themselves in sections 2 and 4 of article III and in article XVI, section 1, of the Nebraska Constitution. Omaha Nat. Bank v. Spire, 223 Neb. 209, 389 N.W.2d 269 (1986).

Legislature is authorized to enact laws to facilitate operation of the initiative power. State ex rel. Winter v. Swanson, 138 Neb. 597, 294 N.W. 200 (1940).

**III-3. Second power reserved; referendum.**

The second power reserved is the referendum which may be invoked, by petition, against any act or part of an act of the Legislature, except those making appropriations for the expense of the state government or a state institution existing at the time of the passage of such act. Petitions invoking the referendum shall be signed by not less than five percent of the registered voters of the state, distributed as required for initiative petitions, and filed in the office of the Secretary of State within ninety days after the Legislature at which the act sought to be referred was passed shall have adjourned sine die or for more than ninety days. Each such petition shall set out the title of the act against which the referendum is invoked and, in addition thereto, when only a portion of the act is sought to be referred, the number of the section or sections or portion of sections of the act designating such portion. No more than one act or portion of an act of the Legislature shall be the subject of each referendum petition. When the referendum is thus invoked, the Secretary of State shall refer the same to the electors for approval or rejection at the first general election to be held not less than thirty days after the filing of such petition.

When the referendum is invoked as to any act or part of act, other than emergency acts or those for the immediate preservation of the public peace, health, or safety, by petition signed by not less than ten percent of the registered voters of the state distributed as aforesaid, it shall suspend the taking effect of such act or part of act until the same has been approved by the electors of the state.

**Source:**Neb. Const. art. III, sec. 1B (1912); Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1920, Constitutional Convention, 1919-1920, No. 4; Amended 1988, Laws 1988, LR 248, sec. 1; Amended 1998, Laws 1997, LR 32CA, sec. 2.

**Annotation**

Sponsors who obtain the signatures of more than 5 percent but less than 10 percent of Nebraska's registered voters on a referendum petition are not entitled to have the contested enactment suspended pending a referendum election. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

This provision specifically reserves to the people the power of referendum and clearly defines the scope of that right and its limitations. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

A funding provision in a bill providing for future contributions to a public school support trust fund is not an appropriation bill and referendum may be invoked. Lawrence v. Beermann, 192

Neb. 507, 222 N.W.2d 809 (1974).

An act of the Legislature means a particular legislative bill which has been passed by the Legislature and approved by the Governor. Klosterman v. Marsh, 180 Neb. 506, 143 N.W.2d 744 (1966).

Taking effect of an emergency act is not suspended until the act has been voted upon by the electors. Read v. City of Scottsbluff, 179 Neb. 410, 138 N.W.2d 471 (1965).

Section has reference only to state legislation, and is not applicable to municipal legislation. Carlberg v. Metcalfe, 120 Neb. 481, 234 N.W. 87 (1930).

Provisions of this section, relating to referendum, have reference to acts of the Legislature only, and not to municipal legislation. Schroeder v. Zehrung, 108 Neb. 573, 188 N.W. 237 (1922).

Where the 10-percent signature requirement contained in this provision is not fulfilled, a referendum vote does not repeal a legislative bill retroactively so as to ameliorate the effects of the legislation while it was in effect. Haskell v. Madison Cty. Sch. Dist. No. 0001, 17 Neb. App. 669, 771 N.W.2d 156 (2009).

Federal district court would not abstain from deciding whether state banking statute was properly adopted by Nebraska Legislature where analysis of the applicable Nebraska case law left no doubt that such statute was invalid. Nebraskans for Independent Banking, Inc. v. Omaha Nat. Bank, 423 F.Supp. 519 (D. Neb. 1976).

**III-4. Initiative or referendum; signatures required; veto; election returns; constitutional amendments; non-partisan ballot.**

The whole number of votes cast for Governor at the general election next preceding the filing of an initiative or referendum petition shall be the basis on which the number of signatures to such petition shall be computed. The veto power of the Governor shall not extend to measures initiated by or referred to the people. A measure initiated shall become a law or part of the Constitution, as the case may be, when a majority of the votes cast thereon, and not less than thirty-five per cent of the total vote cast at the election at which the same was submitted, are cast in favor thereof, and shall take effect upon proclamation by the Governor which shall be made within ten days after the official canvass of such votes. The vote upon initiative and referendum measures shall be returned and canvassed in the manner prescribed for the canvass of votes for president. The method of submitting and adopting amendments to the Constitution provided by this section shall be supplementary to the method prescribed in the article of this Constitution, entitled, "Amendments" and the latter shall in no case be construed to conflict herewith. The provisions with respect to the initiative and referendum shall be self-executing, but legislation may be enacted to facilitate their operation. All propositions submitted in pursuance hereof shall be submitted in a non-partisan manner and without any indication or suggestion on the ballot that they have been approved or endorsed by any political party or organization. Only the title or proper descriptive words of measures shall be printed on the ballot and when two or more measures have the same title they shall be numbered consecutively in the order of filing with the Secretary of State and the number shall be followed by the name of the first petitioner on the corresponding petition.

**Source:**Neb. Const. art. III, sec. 1C & 1D (1912); Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671;

Amended 1920, Constitutional Convention, 1919-1920, No. 4.

**Annotation**

The rule under this provision that "legislation which hampers or renders ineffective the power reserved to the people is unconstitutional" has no application outside of regulating legislation intended to facilitate the initiative or referendum procedures. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

Article III, section 2, which refers to registered voters repeals the reference in article III, section 4, which refers to those voting in the preceding gubernatorial election. The number of signatures required for placement of an initiative petition on the ballot by the Nebraska Constitution is equal to 10 percent of the number of registered voters on the date the signatures are to be turned in. Duggan v. Beermann, 245 Neb. 907, 515 N.W.2d 788 (1994).

Provisions in a statute making it a criminal offense for a person to willfully and knowingly circulate a petition outside the county in which the person is registered to vote, and providing that signatures secured in such a manner shall not be counted, unnecessarily obstruct the people's right to participate in the initiative and referendum process and are therefore unconstitutional. A law which unnecessarily obstructs or impedes operation of the initiative and referendum process is unconstitutional. State ex rel. Stenberg v. Beermann, 240 Neb. 754, 485 N.W.2d 151 (1992).

Under the constitutional provision authorizing the Legislature to enact laws which facilitate the initiative and referendum process, the Legislature may enact reasonable legislation to prevent fraud or to render intelligible the purpose of the proposed law or constitutional amendment. State ex rel. Stenberg v. Beermann, 240 Neb. 754, 485 N.W.2d 151 (1992).

Article III, sections 2 and 4, of the Constitution of the State of Nebraska set out some of the procedural requirements that must be met before an enactment initiated by a petition becomes a part of the statutory law of Nebraska or a part of the Nebraska Constitution. The people of Nebraska have specifically reserved the right to amend their Constitution themselves in sections 2 and 4 of article III and in article XVI, section 1, of the Nebraska Constitution. Omaha Nat. Bank v. Spire, 223 Neb. 209, 389 N.W.2d 269 (1986).

Legislation may be enacted to facilitate referendum. Klosterman v. Marsh, 180 Neb. 506, 143 N.W.2d 744 (1966).

This section authorizes Legislature to enact laws to prevent fraud or to render intelligible the purpose of the proposed law or constitutional amendment. State ex rel. Winter v. Swanson, 138 Neb. 597, 294 N.W. 200 (1940).

The result of a vote upon a proposed constitutional amendment is determined by State Canvassing Board, and, if carried, becomes operative on the date of the Governor's proclamation to that effect. Swanson v. State, 132 Neb. 82, 271 N.W. 264 (1937).

An election held without affirmative constitutional or statutory authority is a nullity. Thompson v. James, 125 Neb. 350, 250 N.W. 237 (1933).

**III-5. Legislative districts; apportionment; redistricting, when required.**

The Legislature shall by law determine the number of members to be elected and divide the state into legislative districts. In the creation of such districts, any county that contains population sufficient to entitle it to two or more members of the Legislature shall be divided into separate and distinct legislative districts, as nearly equal in population as may be and composed of contiguous and compact territory. One member of the Legislature shall be elected from each such district. The basis of apportionment shall be the population excluding aliens, as shown by the next preceding federal census. The Legislature shall redistrict the state after each federal decennial census. In any such redistricting, county lines shall be followed whenever practicable, but other established lines may be followed at the discretion of the Legislature.

**Source:**Neb. Const. art. III, sec. 2 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 5; Amended 1934, Initiative Measure No. 330; Amended 1962, Laws 1961, c. 246, sec. 1, p. 731; Amended 1966, Laws 1965, c. 304, sec. 1, p. 856; Amended 2000, Laws 1999, LR 18CA, sec. 3.

**Annotation**

Where only two counties in the state possessed populations such that they could legally constitute unitary legislative districts and reapportionment plans were offered in the Legislature to that end, it was "practicable" to establish districts which followed the boundaries of those counties. When the population of a county is such that it can legally constitute a legislative district and it is practicable to do so, the Legislature must establish a district which follows that county's boundaries. Day v. Nelson, 240 Neb. 997, 485 N.W.2d 583 (1992).

The part of the 1962 amendment to this section permitting the crossing of county lines in making reapportionment of legislative districts was constitutional. Carpenter v. State, 179 Neb. 628, 139 N.W.2d 541 (1966).

Changing of boundaries of city did not operate to interfere with power of Legislature to divide state into legislative districts. Buller v. City of Omaha, 164 Neb. 435, 82 N.W.2d 578 (1957).

Where grave, unreasonable and gross inequalities exist between different districts, apportionment will be held void. Rogers v. Morgan, 127 Neb. 456, 256 N.W. 1 (1934).

Legislature may only redistrict itself once every ten years. Exon v. Tiemann, 279 F.Supp. 603 (D. Neb. 1967).

Crossing of county lines in making reapportionment of legislative districts was permissible. League of Nebraska Municipalities v. Marsh, 253 F.Supp. 27 (D. Neb. 1966).

Portion of 1962 amendment to this section providing for not less than twenty and not more than thirty per cent weight to be given to area in making apportionment for legislative districts was unconstitutional. League of Nebraska Municipalities v. Marsh, 232 F.Supp. 411 (D. Neb. 1964).

Federal court would not interfere with submission to electors of 1962 amendment to this section. League of Nebraska Municipalities v. Marsh, 209 F.Supp. 189 (D. Neb. 1962).

**III-6. Legislature; number of members; annual sessions.**

The Legislature shall consist of not more than fifty members and not less than thirty members. The sessions of the Legislature shall be annual except as otherwise provided by this constitution or as may be otherwise provided by law.

**Source:**Neb. Const. art. III, sec. 3 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 6; Amended 1934, Initiative Measure No. 330; Amended 1970, Laws 1969, c. 415, sec. 1, p. 1424.

**Annotation**

Second 1965 reapportionment act sustained as constitutional. League of Nebraska Municipalities v. Marsh, 253 F.Supp. 27 (D. Neb. 1966).

Legislative act of 1965 on apportionment of Legislature was unconstitutional. League of Nebraska Municipalities v. Marsh, 242 F.Supp. 357 (D. Neb. 1965).

**III-7. Legislators; terms; effect of redistricting; election; salary; expenses; mileage.**

At the general election to be held in November 1964, one-half the members of the Legislature, or as nearly thereto as may be practicable, shall be elected for a term of four years and the remainder for a term of two years, and thereafter all members shall be elected for a term of four years, with the manner of such election to be determined by the Legislature. When the Legislature is redistricted, the members elected prior to the redistricting shall continue in office, and the law providing for such redistricting shall where necessary specify the newly established district which they shall represent for the balance of their term. Each member shall be nominated and elected in a nonpartisan manner and without any indication on the ballot that he or she is affiliated with or endorsed by any political party or organization. Each member of the Legislature shall receive a salary of not to exceed one thousand dollars per month during the term of his or her office. In addition to his or her salary, each member shall receive an amount equal to his or her actual expenses in traveling by the most usual route once to and returning from each regular or special session of the Legislature. Members of the Legislature shall receive no pay nor perquisites other than his or her salary and expenses, and employees of the Legislature shall receive no compensation other than their salary or per diem.

**Source:**Neb. Const. art. III, sec. 4 (1875); Amended 1886, Laws 1885, c. 124, p. 435; Amended 1912, Laws 1911, c. 224, sec. 1, p. 675; Amended 1920, Constitutional Convention, 1919-1920, No. 7; Amended 1934, Initiative Measure No. 330; Amended 1960, Laws 1959, c. 235, sec. 1, p. 818; Amended 1962, Laws 1961, c. 247, sec. 1, p. 733; Amended 1966, Laws 1965, c. 304, sec. 1, p. 856; Amended 1968, Laws 1967, c. 323, sec. 1, p. 859; Amended 1988, Laws 1988, LR 7, sec. 1.

**Annotation**

LB 1129, adopted by the Nebraska Legislature on April 16, 1986, created a pension program for members of the Legislature that constitutes "pay or perquisites" and is in contravention of this portion of the Constitution, and is thus invalid and unenforceable. State ex rel. Spire v. Public Emp. Ret. Bd., 226 Neb. 176, 410 N.W.2d 463 (1987).

This constitutional provision does not prohibit reimbursement to legislators for their actual expenses of holding office. State ex rel. Douglas v. Beermann, 216 Neb. 849, 347 N.W.2d 297 (1984).

It was a practical impossibility to redistrict legislative districts without taking into consideration the staggered terms of members of Legislature required by this section. Carpenter v. State, 179 Neb. 628, 139 N.W.2d 541 (1966).

Legislator can receive for services as member of Legislature, or member of committee, only compensation provided by Constitution. In re Appeal of Wilkins, 116 Neb. 748, 219 N.W. 9 (1928).

**III-8. Legislators; qualifications; one-year residence in district; removal from district, effect.**

No person shall be eligible to the office of member of the Legislature unless on the date of the general election at which he is elected, or on the date of his appointment he is a registered voter, has attained the age of twenty-one years and has resided within the district from which he is elected for the term of one year next before his election, unless he shall have been absent on the public business of the United States or of this State. And no person elected as aforesaid shall hold his office after he shall have removed from such district.

**Source:**Neb. Const. art. III, sec. 5 (1875); Amended 1972, Laws 1971, LB 126, sec. 1; Amended 1992, Initiative Measure No. 407; Amended 1994, Initiative Measure No. 408. **Note:** The changes made to Article III, section 8, of the Constitution of Nebraska by Initiative 407 in 1992 have been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 245 Neb. 907, 515 N.W.2d 788 (1994).**Note:** The changes made to Article III, section 8, of the Constitution of Nebraska by Initiative 408 in 1994 have been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

**III-9. Legislators; disqualifications; election to other office; resignation required.**

No person holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be eligible to or have a seat in the Legislature. No person elected or appointed to the Legislature shall receive any civil appointment to a state office while holding membership in the Legislature or while the Legislature is in session, and all such appointments shall be void. Except as otherwise provided by law, a member of the Legislature who is elected to any other state or local office prior to the end of his or her term in the Legislature shall resign from the Legislature prior to the commencement of the legislative session during which the term of the state or local office will begin.

**Source:**Neb. Const. art. III, sec. 6 (1875); Amended 1972, Laws 1972, LB 1514, sec. 1; Amended 2000, Laws 2000, LR 6CA, sec. 1.

**Annotation**

It was the purpose not to permit any incentive or temptation for emoluments, gains, or position, to influence members of the Legislature. In re Appeal of Wilkins, 116 Neb. 748, 219 N.W. 9 (1928).

**III-10. Legislative sessions; time; quorum; rules of procedure; expulsion of members; disrespectful behavior, penalty.**

Beginning with the year 1975, regular sessions of the Legislature shall be held annually, commencing at 10 a.m. on the first Wednesday after the first Monday in January of each year. The duration of regular sessions held shall not exceed ninety legislative days in odd-numbered years unless extended by a vote of four-fifths of all members elected to the Legislature, and shall not exceed sixty legislative days in even-numbered years unless extended by a vote of four-fifths of all members elected to the Legislature. Bills and resolutions under consideration by the Legislature upon adjournment of a regular session held in an odd-numbered year may be considered at the next regular session, as if there had been no such adjournment. The Lieutenant Governor shall preside, but shall vote only when the Legislature is equally divided. A majority of the members elected to the Legislature shall constitute a quorum; the Legislature shall determine the rules of its proceedings and be the judge of the election, returns, and qualifications of its members, shall choose its own officers, including a Speaker to preside when the Lieutenant Governor shall be absent, incapacitated, or shall act as Governor. No member shall be expelled except by a vote of two-thirds of all members elected to the Legislature, and no member shall be twice expelled for the same offense. The Legislature may punish by imprisonment any person not a member thereof who shall be guilty of disrespect to the Legislature by disorderly or contemptuous behavior in its presence, but no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior.

**Source:**Neb. Const. art. III, sec. 7 (1875); Amended 1934, Initiative Measure No. 330; Amended 1970, Laws 1969, c. 415, sec. 1, p. 1424; Amended 1974, Laws 1974, LB 598, sec. 1.

**Annotation**

This section applies to all but final passage of a legislative bill. Center Bank v. Dept. of Banking & Finance, 210 Neb. 227, 313 N.W.2d 661 (1981).

Legislature may provide by its rules for reconsideration of confirmation of appointments. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

Canvass of votes for executive state officers occurs when Legislature convenes on first Tuesday in January after election. State ex rel. Caldwell v. Peterson, 153 Neb. 402, 45 N.W.2d 122 (1950).

Court will, by mandamus, compel proper officers to issue certificate of election to member elected. State ex rel. Norton v. Van Camp, 36 Neb. 91, 54 N.W. 113 (1893).

**III-11. Legislative journal; vote viva voce; open doors; committee votes.**

The Legislature shall keep a journal of its proceedings and publish them, except such parts as may require secrecy, and the yeas and nays of the members on any question shall at the desire of any one of them be entered on the journal. All votes shall be viva voce. The doors of the Legislature and of the committees of the Legislature shall be open, except when the business shall be such as ought to be kept secret. The yeas and nays of each member of any committee of the Legislature shall be recorded and published on any question in committee to advance or to indefinitely postpone any bill.

**Source:**Neb. Const. art. III, sec. 8 (1875); Amended 1934, Initiative Measure No. 330; Amended 1998, Laws 1997, LR 10CA, sec. 1.

**Annotation**

When journals of both houses of Legislature and signature of Governor each clearly show the passage of an act in a certain definite form, the undisputed mistake of an enrolling clerk will not be allowed to defeat the act. State ex rel. Ball v. Hall, 130 Neb. 18, 263 N.W. 400 (1935).

A bill duly certified as having passed both houses of the Legislature and approved by the Governor imports verity and its passage can only be overthrown by the journals of the Legislature showing affirmatively that it was not passed in manner prescribed by the Constitution. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

Electric roll call device answers constitutional requirements of "viva voce" vote in Legislature. Day v. Walker, 124 Neb. 500, 247 N.W. 350 (1933).

Procedural action by the Legislature in passing on appropriation bill is prescribed, in part, by this section. Elmen v. State Board of Equalization and Assessment, 120 Neb. 141, 231 N.W. 772 (1930).

Legislative journals are the best evidence of what affirmatively appears regarding enactment of the law. Webster v. City of Hastings, 59 Neb. 563, 81 N.W. 510 (1900).

Certificate of presiding officer of branch of Legislature, that bill was duly passed, is mere prima facie evidence of that fact. Evidence may be received to ascertain whether or not bill actually passed. Webster v. City of Hastings, 56 Neb. 669, 77 N.W. 127 (1898).

It is not competent to impeach proceedings of Legislature by contradicting journals, and facts proper to be inferred from approval of Governor and adoption of bill by officers in House and Senate. In re Granger, 56 Neb. 260, 76 N.W. 588 (1898).

Federal district court would not abstain from deciding whether state banking statute was properly adopted by Nebraska Legislature where analysis of the applicable Nebraska case law left no doubt that such statute was invalid. Nebraskans for Independent Banking, Inc. v. Omaha Nat. Bank, 423 F.Supp. 519 (D. Neb. 1976).

**III-12. Legislators; terms; limitation.**

(1) No person shall be eligible to serve as a member of the Legislature for four years next after the expiration of two consecutive terms regardless of the district represented.

(2) Service prior to January 1, 2001, as a member of the Legislature shall not be counted for the purpose of calculating consecutive terms in subsection (1) of this section.

(3) For the purpose of this section, service in office for more than one-half of a term shall be deemed service for a term.

**Source:**Neb. Const. art. III, sec. 12 (2000); Adopted 2000, Initiative Measure No. 415.

**Annotation**

Subsection (3) of this provision operates only to determine whether an expired legislative term will count as a full term toward disqualification to seek a third consecutive term. State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).

**III-13. Style of bills; majority necessary to passage; yeas and nays entered on journal.**

The style of all bills shall be, Be it enacted by the people of the State of Nebraska, and no law shall be enacted except by bill. No bill shall be passed by the Legislature unless by the assent of a majority of all members elected and the yeas and nays on the question of final passage of any bill shall be entered upon the journal.

**Source:**Neb. Const. art. III, sec. 10 (1875); Amended 1912, Laws 1911, c. 223, sec. 3, p. 674; Amended 1920, Constitutional Convention, 1919-1920, No. 8; Amended 1972, Laws 1971, LB 132, sec. 1.

**Annotation**

Under this provision, a legislature may not attempt to restrict the constitutional power of a succeeding legislature to legislate. State ex rel. Stenberg v. Moore, 249 Neb. 589, 544 N.W.2d 344 (1996).

Language requiring assent of a majority of all members elected to the Legislature before a bill can be passed means that to pass a bill on final reading, bill must have affirmative votes of a majority of all members, and a vote of the Lieutenant Governor is not effective to break a tie and pass a legislative bill on final reading. Center Bank v. Dept. of Banking & Finance, 210 Neb. 227, 313 N.W.2d 661 (1981).

Enrolled bill signed by presiding officers of both houses of Legislature and approved by Governor imports verity as to its passage. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

Electric roll call device answers constitutional requirement if it provides proper record of vote in journal. Day v. Walker, 124 Neb. 500, 247 N.W. 350 (1933).

Appropriation bill containing items in excess of budget recommendations was legally adopted by three-fifths vote of Legislature, without separate three-fifths vote on each item increased over budget proposal. Elmen v. State Board of Equalization and Assessment, 120 Neb. 141, 231 N.W. 772 (1930).

This section requires an affirmative vote of a majority of all members elected to the Legislature, and not merely the majority of a quorum, in order to either enact a law or add amendments to a bill or a rescission of an affirmative act already taken. Moore v. Neece, 80 Neb. 600, 114 N.W. 767 (1908).

**III-14. Bills and resolutions read by title; printing; vote for final passage; bills to contain one subject; amended section to be set forth; signing of bills.**

Every bill and resolution shall be read by title when introduced, and a printed copy thereof provided for the use of each member. The bill and all amendments thereto shall be printed and presented before the vote is taken upon its final passage and shall be read at large unless three-fifths of all the members elected to the Legislature vote not to read the bill and all amendments at large. No vote upon the final

passage of any bill shall be taken until five legislative days after its introduction nor until it has been on file for final reading and passage for at least one legislative day. No bill shall contain more than one subject, and the subject shall be clearly expressed in the title. No law shall be amended unless the new act contains the section or sections as amended and the section or sections so amended shall be repealed. The Lieutenant Governor, or the Speaker if acting as presiding officer, shall sign, in the presence of the Legislature while it is in session and capable of transacting business, all bills and resolutions passed by the Legislature.

**Source:**Neb. Const. art. III, sec. 11 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 8; Amended 1934, Initiative Measure No. 330; Amended 1996, Laws 1995, LR 4CA, sec. 1.

**Annotation**

**1. Title to act**
**2. Acts containing more than one subject**
**3. Independent complete acts**
**4. Amendatory acts**
**5. Legislative procedure**
**6. Miscellaneous**

**1. Title to act**

The Supreme Court will not strike down legislation as violative of this section if the title calls attention to the subject matter of the bill, and the portion of the bill challenged is germane to the purpose announced in the title. One does not have standing to complain that a statute is unconstitutional unless he is injuriously affected thereby. Blackledge v. Richards, 194 Neb. 188, 231 N.W.2d 319 (1975).

Purpose of the title is to describe the subject not to synopsize the contents or every conceivable consequence. Title found sufficient. Hall v. Simpson, 184 Neb. 762, 171 N.W.2d 805 (1969).

Bill providing procedure for withdrawal from area vocational technical schools did not violate this section. Chaloupka v. Area Vocational Technical School No. 2, 184 Neb. 196, 165 N.W.2d 719 (1969).

Title of act need not refer to provisions of the act being amended if the nature of the legislation contained or the nature of the changes or additions made by it are sufficiently indicated. Tom & Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).

In enacting act increasing penalty for assault upon guard by inmate of penal institution, the title of the act did not violate this section. State v. Lovell, 181 Neb. 401, 149 N.W.2d 46 (1967).

Title to Industrial Development Act of 1961 was sufficient, and act was not broader than title. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

Title of amendatory act must give reasonable notice of the general subject upon which it is proposed to legislate. State ex rel. Bottolfson v. School Board of Sch. Dist. No. R1 of Cedar and Dixon Counties, 170 Neb. 417, 103 N.W.2d 146 (1960).

Amendment to Installment Loan Act was broader than title and was violative of this section. Thompson v. Commercial Credit Equipment Corp., 169 Neb. 377, 99 N.W.2d 761 (1959).

Title to amendatory act relating to taxation of motor vehicles was sufficient. Peterson v. Hancock, 166 Neb. 637, 90 N.W.2d 298 (1958).

Defect in title was cured by incorporation of statute in 1943 revision. Peterson v. Vasak, 162 Neb. 498, 76 N.W.2d 420 (1956).

Title to act dealing with depopulated school districts was sufficient. Schutte v. Schmitt, 162 Neb. 162, 75 N.W.2d 656 (1956).

Defect in title to legislative act was cured by adoption by Legislature of general revision act. McGraw Electric Co. v. Lewis & Smith Drug Co., Inc., 159 Neb. 703, 68 N.W.2d 608 (1955).

Title to Motor Vehicle Safety Responsibility Act was good. Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620 (1952).

Where bill contains but one subject and that subject is clearly expressed in the title, constitutional requirements have been met, even though title contains duplicitous or extraneous provisions not necessary to its validity. Midwest Popcorn Co. v. Johnson, 152 Neb. 867, 43 N.W.2d 174 (1950).

Legislative act defining offense of foeticide is constitutional. Hans v. State, 147 Neb. 67, 22 N.W.2d 385 (1946).

Where title to amendatory act indicates the subject of the proposed legislation, and the provisions of the act are germane to the subject matter of the original section proposed to be changed, the act is not violative of this section. County of Dawson v. South Side Irr. Co., 146 Neb. 512, 20 N.W.2d 387 (1945).

It is not required that title be a synopsis of the act. Maher v. State, 144 Neb. 463, 13 N.W.2d 641 (1944).

If act has but one general object, no matter how broad, and contains no matter not germane thereto, and title fairly expresses the subject of the bill, it does not violate constitutional provisions. Beisner v. Cochran, 138 Neb. 445, 293 N.W. 289 (1940).

Statute defining ice cream was not vulnerable to objection act was broader than its title. State v. McCosh, 134 Neb. 780, 279 N.W. 775 (1938).

A title is not necessary to an act providing for submission of a proposed amendment to Constitution, and will be treated as null and void. Swanson v. State, 132 Neb. 82, 271 N.W. 264 (1937).

Title, "An act relating to municipal courts," is sufficient to include a section providing for eligibility of judges of such courts. Spier v. Thomas, 131 Neb. 579, 269 N.W. 61 (1936).

Act providing for payment of delinquent taxes by annual installments was not broader than title. Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317 (1936).

Act providing for adoption of managerial form of county government was broader than title.

State ex rel. O'Connor v. Tusa, 130 Neb. 528, 265 N.W. 524 (1936).

In determining whether an act amending a previous act is broader than its title, court will consider the titles to both the amending and amended acts. Miller v. Iowa-Nebraska Light & Power Co., 129 Neb. 757, 262 N.W. 855 (1935).

A proviso attached to an appropriation, subject of which proviso is not referred to in title of act, is invalid. State ex rel National Surety Corp. v. Price, 129 Neb. 433, 261 N.W. 894 (1935).

Title reading, "to provide punishment for one who makes statements or representations with intent to defraud," is not broad enough to include imposition of penalty on one who does not know that statements are false but had ground to believe they were false. Joseph v. State, 128 Neb. 824, 260 N.W. 803 (1935).

Title of independent act authorizing construction of sewers and providing that owners or occupants of premises be charged for the services, and to raise money, is broad enough to include legislation authorizing issuance of bonds secured by property and revenue of sewerage system. State ex rel. City of Columbus v. Price, 127 Neb. 132, 254 N.W. 889 (1934).

Act relating to irrigation, flood control, storage of waters, and to generation, distribution, transmission, sale and purchase of electrical energy was valid. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

Act providing for erecting bridges over irrigation ditches on public roads was invalid to extent it was broader than title. State ex rel. County of Dawson v. Dawson County Irr. Co., 125 Neb. 836, 252 N.W. 320 (1934).

Where title to act provided for the regulation and licensing of traffic in tobacco, it was not unconstitutional as a revenue measure, a subject not mentioned in title. Nash-Finch Co. v. Beal, 124 Neb. 835, 248 N.W. 374 (1933).

Nepotism law was void because provisions for penalty were not embraced in title. Wayne County v. Steele, 121 Neb. 438, 237 N.W. 288 (1931).

Act providing for control and eradication of disease among domestic animals was not invalid as containing more than one subject not clearly expressed in title. State ex rel. Sorensen v. Knudtsen, 121 Neb. 270, 236 N.W. 696 (1931).

Title designating act as establishing laws relating to civil government and administration thereof was broad enough to include provisions regulating banking. Westbrook v. State, 120 Neb. 625, 234 N.W. 579 (1931).

Securities law was not invalid because provision for burden of proof as to exemptions was not specifically referred to in title. Pandolfo v. State, 120 Neb. 616, 234 N.W. 483 (1931).

Where title fairly gives expression to general subject matter, act will not be held invalid as broader than title. Mehrens v. Bauman, 120 Neb. 110, 231 N.W. 701 (1930).

Title must be such as to give reasonable notice to members of Legislature and others interested,

of the general subject upon which it is proposed to legislate. Appel Mercantile Co. v. Barker, 92 Neb. 669, 138 N.W. 1133 (1912).

If general purpose of act is expressed and matter contained in body is germane thereto, title is sufficient. State ex rel. Baughn v. Ure, 91 Neb. 31, 135 N.W. 224 (1912).

Title need not be abstract of bill, but it is sufficient if title indicates subject of proposed legislation. Nebraska Loan & Bldg. Assn. v. Perkins, 61 Neb. 254, 85 N.W. 67 (1901).

Title of act is part thereof and must clearly express subject matter. State v. Burlington & M. R. R. Co., 60 Neb. 741, 84 N.W. 254 (1901).

Purpose is to prevent subjects of different nature from being inserted under color of amendment. State ex rel. Graham v. Tibbets, 52 Neb. 228, 71 N.W. 990 (1897).

Provisions relating to title should be liberally construed to admit insertion in act of all provisions which, though not specifically expressed in title, are comprehended within objects and purposes of act, and all provisions germane and not foreign to expressed provisions in title. Affholder v. State ex rel. McMullen, 51 Neb. 91, 70 N.W. 544 (1897).

Provision as to title applies to amendatory acts as well as complete and independent acts. West Point Water Power & Land Improvement Co. v. State ex rel. Moodie, 49 Neb. 223, 68 N.W. 507 (1896).

**2. Acts containing more than one subject**

Act of Legislature authorizing city of primary class to annex contiguous or adjacent lands did not violate this section. Campbell v. City of Lincoln, 182 Neb. 459, 155 N.W.2d 444 (1968).

Nebraska Revenue Act of 1967 did not violate provision that no bill shall contain more than one subject. Anderson v. Tiemann, 182 Neb. 393, 155 N.W.2d 322 (1967).

Title of Blanket Mill Tax Levy Act was good and act was independent legislation. Peterson v. Hancock, 155 Neb. 801, 54 N.W.2d 85 (1952).

Statute prohibiting state and federal officers and employees from being delegates to county, district, and state political conventions contained but one subject which was clearly expressed in the title. State ex rel. Baldwin v. Strain, 152 Neb. 763, 42 N.W.2d 796 (1950).

Act relating to county jails and fees of sheriffs with reference to care of prisoners therein contained but one subject and was constitutional. Dorrance v. County of Douglas, 149 Neb. 685, 32 N.W.2d 202 (1948).

Statute relating to condemnation of public utilities is not violative of constitutional requirement of single subject clearly expressed in title. City of Mitchell v. Western Public Service Co., 124 Neb. 248, 246 N.W. 484 (1933).

Intangible tax statute was not invalid as containing more than one subject. Mehrens v. Greenleaf, 119 Neb. 82, 227 N.W. 325 (1929).

Act relating to recovery on forfeited recognizance was not void as containing more than one subject not clearly expressed in title. State v. Painter, 117 Neb. 42, 219 N.W. 794 (1928).

Statute entitled "An act to amend" certain sections "and to repeal" the same as then existing, was not broader than title. Conservative Sav. & L. Assn. of Omaha v. Anderson, 116 Neb. 627, 218 N.W. 423 (1928).

Including provision for drainage of subirrigated lands in act relating to organization of irrigation district does not violate requirement that bill shall contain only one subject to be expressed in title. State ex rel. Reed v. Farmers Irr. Dist., 116 Neb. 373, 217 N.W. 607 (1928).

Provisions for raising money by taxation, issuing bonds, and eminent domain, was not beyond scope of act "defining powers and government of light, heat and power districts." Elliott v. Wille, 112 Neb. 78, 200 N.W. 347 (1924).

Provision for housing municipal court in county courthouse was not beyond scope of act "to create municipal court," etc. State ex rel. City of Omaha v. Board of County Comrs. of Douglas County, 109 Neb. 35, 189 N.W. 639 (1922).

Where title of act refers to both relocation of county seats and county division, but body of act relates only to relocation, it is not invalid as containing two subjects. Murray v. Nelson, 107 Neb. 52, 185 N.W. 319 (1921).

Statute "relating to stealing, buying or concealing automobiles," was not invalid as containing more than one subject, although providing for rules of evidence, and for including more than one count in indictment. Birdhead v. State, 105 Neb. 296, 180 N.W. 583 (1920).

Act "to provide for county farm bureaus," was not invalid for containing more than one subject, though it contains provisions for employment and payment of county agent, duties of county board, etc. State ex rel. Hall County Farm Bureau v. Miller, 104 Neb. 838, 178 N.W. 846 (1920).

Including crime of buying or receiving stolen automobiles in act relating to larceny of motor vehicles was not more than one subject. Sandlovich v. State, 104 Neb. 169, 176 N.W. 81 (1920).

Act relating to rural school districts contained only one subject. Gauchat v. School Dist. No. 5 in Nemaha County, 101 Neb. 377, 163 N.W. 334 (1917).

Statute regulating licensing of persons practicing chiropody, chiropractic, and dentistry, was not invalid as containing more than one subject. Peet Stock Remedy Co. v. McMullen, 32 F.2d 669 (8th Cir. 1929).

**3. Independent complete acts**

If an act is complete and independent in itself it may incidentally amend, modify, or have impact upon provisions of existing statutes without violating this section. Aschenbrenner v. Nebraska P.P. Dist., 206 Neb. 157, 291 N.W.2d 720 (1980).

The independent act considered herein is not unconstitutional for failure to mention in the incidental provision for payment or exemption from payment of costs, nor for failing to refer to

and repeal certain other statutes. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

L.B. 1357, Laws 1969, providing for natural resources districts was independent legislation and not violative of this section. Neeman v. Nebraska Nat. Resources Commission, 191 Neb. 672, 217 N.W.2d 166 (1974).

Act prohibiting merger of school districts in certain cases was complete and independent. Bodenstedt v. Rickers, 189 Neb. 407, 203 N.W.2d 110 (1972).

Nebraska Trust Deeds Act did not violate this section. Blair Co. v. American Savings Co., 184 Neb. 557, 169 N.W.2d 292 (1969).

Parking Authority Law was original and independent legislation and title to act was sufficient. Omaha Parking Authority v. City of Omaha, 163 Neb. 97, 77 N.W.2d 862 (1956).

Eminent domain procedure act sustained as constitutional. Jensen v. Omaha Public Power Dist., 159 Neb. 277, 66 N.W.2d 591 (1954).

Reclamation Act did not violate this section. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

General appropriation bill of 1945 sustained as constitutional. Rein v. Johnson, 149 Neb. 67, 30 N.W.2d 548 (1947).

An independent act may incorporate within itself by reference provisions of another existing act, and the effect is the same as though the statute or part adopted had been written into the adopting statute. Rocky Mountain Lines v. Cochran, 140 Neb. 378, 299 N.W. 596 (1941).

Housing authority acts of 1937 are independent and complete in themselves and hence not violative of constitutional provision. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

If act is complete and independent in itself, it may amend or modify provisions of existing statutes without controverting the provisions of Constitution relating to amendments. Live Stock Nat. Bank v. Jackson, 137 Neb. 161, 288 N.W. 515 (1939); Hinman v. Temple, 133 Neb. 268, 274 N.W. 605 (1937).

Independent act, complete in itself, is not rendered amendatory because it refers to another act for procedure taken. Department of Banking v. Foe, 136 Neb. 422, 286 N.W. 264 (1939).

An independent legislative act covering the entire subject of legislation may change or repeal former enactments in conflict with new provisions. State ex rel. Kaspar v. Lehmkuhl, 127 Neb. 812, 257 N.W. 229 (1934).

Civil Administrative Code law was complete in itself, and not amendatory. Sheridan County v. Hand, 114 Neb. 813, 210 N.W. 273 (1926).

Act, complete in itself, which conflicts with prior statute but does not purport to amend it, is not

invalid, but repeals earlier statute by implication. Drew v. Mumford, 114 Neb. 100, 206 N.W. 159 (1925).

Act defining and providing penalties for blackmail was complete act covering distinct crime, and not amendatory of statutes covering related offenses. McKenzie v. State, 113 Neb. 576, 204 N.W. 60 (1925).

Act relating to state mineral land leases was complete and not amendatory. Briggs v. Neville, 103 Neb. 1, 170 N.W. 188 (1918).

Mothers' Pension Law was complete and not amendatory of poor laws. Rumsey v. Saline County, 102 Neb. 302, 167 N.W. 66 (1918).

Act requiring county attorney to perform duties of coroner was complete, and its effect was to incorporate into new law the existing laws relating to duties of coroner. State ex rel. Crosby v. Moorhead, 100 Neb. 298, 159 N.W. 412 (1916).

Later act relating to verification, filing and allowance of claims against counties, being complete in itself, repealed by implication conflicting prior statute. Uttley v. Sievers, 100 Neb. 59, 158 N.W. 373 (1916).

Act providing for teaching foreign languages in schools was complete, and not amendatory of or in conflict with any prior law. State ex rel. Thayer v. School Dist. of Nebraska City, 99 Neb. 338, 156 N.W. 641 (1916).

Act to define "week" in legal notices was complete and not amendatory. In re Estate of Johnson, 98 Neb. 799, 154 N.W. 550 (1915).

Act complete in itself repeals by implication existing laws in conflict or repugnant thereto. State ex rel. Farmers State Bank of Pickrell v. Hevelone, 92 Neb. 748, 139 N.W. 636 (1913).

Mere fact that act refers to prior act by implication does not render new act amendatory if otherwise complete. Stewart v. Barton, 91 Neb. 96, 135 N.W. 381 (1912).

Provision is not violated by changes or modifications in existing statutes merely as incidental result of adopting new law covering whole subject to which it relates. De France v. Harmer, 66 Neb. 14, 92 N.W. 159 (1902).

Law relating to irrigation districts containing no reference to previous law must be construed as independent act. Bridgeport Irr. Dist. v. United States, 40 F.2d 827 (8th Cir. 1930).

Statute conferring additional powers on irrigation district was independent act, complete in itself, not governed by this section. New York Trust Co. v. Farmers Irr. Dist., 280 F. 785 (8th Cir. 1922).

**4. Amendatory acts**

The Depressant and Stimulant Drugs Act of 1967 did not violate this section. State v. Waechter, 189 Neb. 433, 203 N.W.2d 104 (1972).

L.B. 1003, Eighty-second Legislature, First Session, sections 23-2601 to 23-2612 did not violate this section since it was not amendatory. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

An act which does not contain section amended but changes existing statutes in part so that changes and existing provisions result in connected piece of legislation covering same subject matter is void under this section. State v. Greenburg, 187 Neb. 149, 187 N.W.2d 751 (1971).

Cited in construing intent of the Legislature. Schurmann v. Curtiss, 183 Neb. 277, 159 N.W.2d 554 (1968).

Airport Authority Act did not violate this section. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

The 1959 amendments to the act prescribing rules for administrative agencies were constitutional. Yellow Cab Co. v. Nebraska State Railway Commission, 175 Neb. 150, 120 N.W.2d 922 (1963).

The fact that legislation is cast in the form of an independent act is not controlling if in substance it is amendatory. Chicago, B. & Q. R. R. Co. v. County of Box Butte, 166 Neb. 603, 90 N.W.2d 72 (1958).

Inference of amendment by implication could not be made. Omaha Nat. Bank v. Jensen, 157 Neb. 22, 58 N.W.2d 582 (1953).

Legislative act providing for proceedings with reference to children born out of wedlock did not violate this section. In re Application of Rozgall, 147 Neb. 260, 23 N.W.2d 85 (1946).

Reference to sections in compilation by an amendatory act applied to constitutional parts of original act, even though portions thereof had been held unconstitutional. Sullivan v. City of Omaha, 146 Neb. 297, 19 N.W.2d 510 (1945).

Statute may adopt penalty provision of another statute without being amendatory thereof. Adams v. State, 138 Neb. 613, 294 N.W. 396 (1940).

Under prior constitutional provision, if a bill was introduced in Legislature with constitutional time limit, amendments germane to its subject may be made after expiration of such time limit. Pierson v. Faulkner, 134 Neb. 865, 279 N.W. 813 (1938).

Where an act, although purporting to be independent act complete in itself, is in fact purely amendatory of existing legislation, it is void for noncompliance with this section. State ex rel. Day v. Hall, 129 Neb. 699, 262 N.W. 850 (1935); State ex rel. Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935).

Statute providing for payment of delinquent taxes without interest and penalty was amendatory of existing laws and invalid because not repealing original sections. Tukey v. Douglas County, 129 Neb. 353, 261 N.W. 833 (1935).

Where title states that subject of an act is to amend one section of a former statute, the act

cannot be extended to amend other sections, and where title is to repeal certain sections the bill cannot re-enact the substance of the statutes repealed in title nor amend sections so repealed. Moeller, McPherrin & Judd v. Smith, 127 Neb. 424, 255 N.W. 551 (1934).

Where an act, although professing to be an independent act, makes changes in existing acts by adding new provisions and mingling the new with the old so as to make of the new and the old a connected piece of legislation covering the same subject, it is within the constitutional prohibition. State ex rel. Beal v. Bauman, 126 Neb. 566, 254 N.W. 256 (1934).

Substituting complete new act authorizing counties to foreclose liens for taxes delinquent more than three years, by amendment germane to original act, was not violative of requirement that new act set out amended sections. Douglas County v. Barker Co., 125 Neb. 253, 249 N.W. 607 (1933); Commercial Savings & Loan Assn. v. Pyramid Realty Co., 121 Neb. 493, 237 N.W. 575 (1931).

Common law marriage statute was not violative of constitutional prohibitions herein. Collins v. Hoag & Rollins, 122 Neb. 805, 241 N.W. 766 (1932).

Provision appointing county treasurer agent of department of public works in collection of automobile registration fees, and providing that he should retain 5-cent fee and account therefor was germane to act which it amended. Wayne County v. Steele, 121 Neb. 438, 237 N.W. 288 (1931).

Act to determine heirship did not violate provision respecting amendments. In re Robinson Heirship, 119 Neb. 285, 228 N.W. 852 (1930).

Intangible tax statute was not violative of provision respecting amendments. Mehrens v. Greenleaf, 119 Neb. 82, 227 N.W. 325 (1929).

Where act does not cover the whole subject or general scheme of legislation, and fails to amend existing statutes, it is void. State v. Painter, 117 Neb. 42, 219 N.W. 794 (1928).

Statute purporting to amend a certain section mentioned in title, but which attempts to amend another section without reference thereto, is void. Endres v. McDonald, 115 Neb. 827, 215 N.W. 114 (1927).

Statute requiring claims for damages against utilities district to be filed within 20 days, was void because not germane to original section attempted to be amended. Day v. Metropolitan Utilities Dist., 115 Neb. 711, 214 N.W. 647 (1927).

Section in Bovine Tuberculosis Act was void because not germane to subject expressed in title. State ex rel. Spillman v. Heldt, 115 Neb. 435, 213 N.W. 578 (1927).

Title of amendatory act using the word "bootlegging" was not inconsistent with body of act or subject matter of section to be amended. Knothe v. State, 115 Neb. 119, 211 N.W. 619 (1926).

Act amending section of Workmen's Compensation Law was void because added words were not germane to original section. Allen v. Trester, 112 Neb. 515, 199 N.W. 841 (1924).

Where two statutes are enacted at the same session without reference to one another, but as amendments of identical sections of the statutes, the one which is the later expression of the legislative will prevails, if the two enactments are irreconcilable. State ex rel. City of Omaha v. Board of County Comrs. of Douglas County, 109 Neb. 35, 189 N.W. 639 (1922).

Act amending section of prohibition law was germane to subject of legislation. State v. Badberg, 108 Neb. 816, 189 N.W. 157 (1922).

Amendatory act relating to county high school districts was germane to subject of legislation. State ex rel. Stockwell v. Berryman, 102 Neb. 553, 167 N.W. 790 (1918).

Amendatory act providing for consolidating contiguous school districts was germane to purpose of original section providing for children in one district attending school in another. Johnson v. School Dist. No. 101 of Saunders County, 102 Neb. 347, 167 N.W. 210 (1918).

Amendatory act requiring drainage district directors to submit question of incurring expense to election was germane to original section defining directors' duties. State ex rel. Gantz v. Drainage Dist. No. 1 of Merrick County, 100 Neb. 625, 160 N.W. 997 (1916).

Act increasing limit of taxation for county building was not complete but amendatory of existing statute fixing limit, and void because it does not contain or repeal amended section. Minier v. Burt County, 95 Neb. 473, 145 N.W. 977 (1914), rehearing denied 95 Neb. 483, 145 N.W. 1104 (1914).

Section as amended should contain all that is substituted for original section and original section should be entirely repealed. State ex rel. Martin v. Farmers & Merchants Bank of Oakland, 93 Neb. 1, 139 N.W. 653 (1913).

Where act amends specified section of statute, it is sufficient if the amendment is germane. State ex rel. Sch. Dist. of City of Lincoln v. Barton, 91 Neb. 357, 136 N.W. 22 (1912).

No amendatory legislation not germane to subject matter of original section can be included in act to amend particular section. Armstrong v. Mayer, 60 Neb. 423, 83 N.W. 401 (1900).

Amendatory legislation foreign to subject of original act, and not embraced in title thereof, cannot be included in amendatory act. State ex rel. Scott v. Bowen, 54 Neb. 211, 74 N.W. 615 (1898).

Act must set out in full new section and also contain repeal of old section amended. Reynolds v. State, 53 Neb. 761, 74 N.W. 330 (1898).

Referring to section of statute is sufficient in an amendatory act, but matters not germane to original section can not be included. Horkey v. Kendall, 53 Neb. 522, 73 N.W. 953 (1898).

Amendatory act is void if there is no mention of, or reference to, amended section or law. Douglas County v. Hayes, 52 Neb. 191, 71 N.W. 1023 (1897).

This section requires all parts of amended law to be included in new act and old law so amended to be repealed. State ex rel. Carey v. Cornell, 50 Neb. 526, 70 N.W. 56 (1897).

Act amending subdivision of section, and which contains subdivision so amended, does not violate Constitution. State ex rel. City Water Co. v. City of Kearney, 49 Neb. 325, 68 N.W. 533 (1896).

Where act may be construed to be either amendatory or an independent act, it will be given that construction which will sustain its constitutionality. Bridgeport Irr. Dist. v. United States, 40 F.2d 827 (8th Cir. 1930).

Statute relating to practice of veterinary medicine and surgery was not violative of this section. Peet Stock Remedy Co. v. McMullen, 32 F.2d 669 (8th Cir. 1929).

**5. Legislative procedure**

This provision does not demand that a bill remain uninterrupted on final reading for at least 1 legislative day immediately prior to its passage. DeCamp v. State, 256 Neb. 892, 594 N.W.2d 571 (1999).

This section, applying to legislative bills, refers to final passage. Klosterman v. Marsh, 180 Neb. 506, 143 N.W.2d 744 (1966).

Substituting an entire new bill by amendment is not unconstitutional where changes are germane; and it is not necessary that bill, if read twice before amendment, should again be placed on first and second reading. State ex rel. Davis v. Cox, 105 Neb. 75, 178 N.W. 913 (1920).

Failure of senate presiding officer to sign bill, afterwards approved by Governor, and shown on senate journal passed by constitutional majority, does not invalidate. State ex rel. Neb. State Railway Commission v. Missouri P. Ry. Co., 100 Neb. 700, 161 N.W. 270 (1916).

Three readings are not required after amendments have been made following the first and second reading. State ex rel. Martin v. Ryan, 92 Neb. 636, 139 N.W. 235 (1912).

Bill not authenticated by signature of presiding officer of either branch of Legislature was void. State ex rel. McClay v. Mickey, 73 Neb. 281, 102 N.W. 679 (1905).

This section does not require three separate readings of bills as finally amended. State ex rel. First Nat. Bank of Atkinson v. Cronin, 72 Neb. 636, 101 N.W. 325 (1904).

This section does not require that amendment or bills as amended, shall be read on three separate days. Cleland v. Anderson, 66 Neb. 252, 92 N.W. 306 (1902), affirmed on rehearing 66 Neb. 273, 96 N.W. 212 (1903), affirmed on rehearing 66 Neb. 276, 98 N.W. 1075 (1904).

Bill must be read on three separate days. State v. Burlington & M. R. R. Co., 60 Neb. 741, 84 N.W. 254 (1900).

**6. Miscellaneous**

Under this provision, a legislature may not attempt to restrict the constitutional power of a succeeding legislature to legislate. State ex rel. Stenberg v. Moore, 249 Neb. 589, 544 N.W.2d 344 (1996).

Act establishing Court of Industrial Relations does not violate any constitutional provision and the standards for its guidance are adequate. Orleans Education Assn. v. School Dist. of Orleans, 193 Neb. 675, 229 N.W.2d 172 (1975).

Constitutionality of Municipal Ground Water Act raised, but not decided. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

Unconstitutionality of tax statute under this section raised but not decided. Creigh v. Larsen, 171 Neb. 317, 106 N.W.2d 187 (1960).

Provision of former primary election law requiring filing fifty days before primary by incumbent of one office seeking another was unconstitutional. Fitzgerald v. Kuppinger, 163 Neb. 286, 79 N.W.2d 547 (1956).

Installment Loan Act did not violate requirements of this section. State ex rel. Beck v. Associates Discount Corp., 162 Neb. 683, 77 N.W.2d 215 (1956).

This section does not apply to passage of city ordinances, and decisions thereunder are only valuable as analogies. Gembler v. City of Seward, 136 Neb. 196, 285 N.W. 542 (1939).

Entire act is void, where part of the act which is held unconstitutional is an inducement to the passage thereof, and is not separable. McShane v. Douglas County, 96 Neb. 664, 148 N.W. 569 (1914).

Federal district court would not abstain from deciding whether state banking statute was properly adopted by Nebraska Legislature where analysis of the applicable Nebraska case law left no doubt that such statute was invalid. Nebraskans for Independent Banking, Inc. v. Omaha Nat. Bank, 423 F.Supp. 519 (D. Neb. 1976).

**III-15. Members privileged from arrest.**

Members of the Legislature in all cases except treason, felony or breach of the peace, shall be privileged from arrest during the session of the Legislature, and for fifteen days next before the commencement and after the termination thereof.

**Source:**Neb. Const. art. III, sec. 12 (1875).

**Annotation**

Legislature may by law provide that members are exempt from service of civil process during session. Berlet v. Weary, 67 Neb. 75, 93 N.W. 238 (1903).

Privilege of member is not privilege of the Legislature merely but of the people, and is conferred to enable him to discharge trust confided to him by constituents. State v. Elder, 31 Neb. 169, 47 N.W. 710 (1891).

**III-16. Members of the Legislature and state officers; conflicts of interest; standards for.**

No member of the Legislature or any state officer shall have a conflict of interest, as defined by the Legislature, directly in any contract, with the state or any county or municipality thereof, authorized by any law enacted during the term for which he shall have been elected or appointed, or within one year after the expiration of such term. The Legislature shall prescribe standards and definitions for determining the existence of such conflicts of interest in contracts, and it shall prescribe sanctions for enforcing this section.

**Source:**Neb. Const. art. III, sec. 13 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 9; Amended 1968, Laws 1967, c. 322, sec. 1, p. 856; Amended 1972, Laws 1972, LB 1514, sec. 1.

**Annotation**

Legislator can receive from state only compensation provided by Constitution, for services as member of Legislature or of committee. In re Appeal of Wilkins, 116 Neb. 748, 219 N.W. 9 (1928).

If member is interested in any contract authorized by law passed during his term, this section would prevent his claiming any rights under such contract, but would not invalidate the law. Briggs v. Neville, 103 Neb. 1, 170 N.W. 188 (1918).

**III-17. Impeachment; procedure.**

The Legislature shall have the sole power of impeachment, but a majority of the members elected must concur therein. Proceedings may be initiated in either a regular session or a special session of the Legislature. Upon the adoption of a resolution of impeachment, which resolution shall give reasonable notice of the acts or omissions alleged to constitute impeachable offenses but need not conform to any particular style, a notice of an impeachment of any officer, other than a Judge of the Supreme Court, shall be forthwith served upon the Chief Justice, by the Clerk of the Legislature, who shall thereupon call a session of the Supreme Court to meet at the Capitol in an expeditious fashion after such notice to try the impeachment. A notice of an impeachment of the Chief Justice or any Judge of the Supreme Court shall be served by the Clerk of the Legislature, upon the clerk of the judicial district within which the Capitol is located, and he or she thereupon shall choose, at random, seven Judges of the District Court in the State to meet within thirty days at the Capitol, to sit as a Court to try such impeachment, which Court shall organize by electing one of its number to preside. The case against the impeached civil officer shall be brought in the name of the Legislature and shall be managed by two senators, appointed by the Legislature, who may make technical or procedural amendments to the articles of impeachment as they deem necessary. The trial shall be conducted in the manner of a civil proceeding and the impeached civil officer shall not be allowed to invoke a privilege against self-incrimination, except as otherwise applicable in a general civil case. No person shall be convicted without the concurrence of two-thirds of the members of the Court of impeachment that clear and convincing evidence exists indicating that such person is guilty of one or more impeachable offenses, but judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, profit, or trust, in this State, but the party impeached, whether convicted or acquitted, shall nevertheless be liable to prosecution and punishment according to law. No officer shall exercise his or her official duties after he or she shall have been impeached and notified thereof, until he or she shall have been acquitted.

**Source:**Neb. Const. art. III, sec. 14 (1875); Amended 1972, Laws 1971, LB 126, sec. 1; Amended 1986, Laws 1986, LR 318, sec. 1.

**Annotation**

An impeachment trial is conducted as a civil proceeding, and the standard of proof for a conviction of impeachment is clear and convincing evidence. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

The Nebraska Supreme Court's role as fact finder is limited to finding whether the Legislature has shown by clear and convincing evidence that an officer is guilty of one or more impeachable offenses. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

This provision limits the Nebraska Supreme Court's judgment to removal from office and disqualification to hold other state offices. This provision specifically provides that the party impeached, whether convicted or acquitted, shall nevertheless be liable to prosecution and punishment according to law. Thus, the Nebraska Constitution explicitly provides that a conviction of impeachment is not the same as a criminal conviction and that impeachment sanctions cannot rise to the level of criminal punishment. Because criminal conviction is not at stake in an impeachment proceeding, a "beyond a reasonable doubt" standard of proof is not required. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

An impeachment must be tried by the Supreme Court. State v. Douglas, 217 Neb. 199, 349 N.W.2d 870 (1984).

The effect of this provision is to require the concurrence of five or more judges to convict on any count of an impeachable offense. State v. Douglas, 217 Neb. 199, 349 N.W.2d 870 (1984).

A constitutional officer can only be removed by impeachment. Laverty v. Cochran, 132 Neb. 118, 271 N.W. 354 (1936).

Only method of removing county judge is by impeachment under this section. Conroy v. Hallowell, 94 Neb. 794, 144 N.W. 895 (1913).

Impeachment is essentially criminal prosecution and accused must be proven guilty beyond reasonable doubt. State v. Hastings, 37 Neb. 96, 55 N.W. 774 (1893).

Authority to present other or amended articles of impeachment rests along with Legislature, and power to impeach cannot be delegated. State v. Leese, 37 Neb. 92, 55 N.W. 798 (1893).

Power of impeachment is exclusively conferred upon the Legislature and either one of two judgments can be pronounced, removal from office or removal and disqualification to hold office. Impeachment will not lie after term of office has expired. State v. Hill, 37 Neb. 80, 55 N.W. 794 (1893).

**III-18. Local or special laws prohibited.**

The Legislature shall not pass local or special laws in any of the following cases, that is to say:

For granting divorces.

Changing the names of persons or places.

Laying out, opening altering and working roads or highways.

Vacating roads, Town plats, streets, alleys, and public grounds.

Locating or changing County seats.

Regulating County and Township offices.

Regulating the practice of Courts of Justice.

Regulating the jurisdiction and duties of Justices of the Peace, Police Magistrates and Constables.

Providing for changes of venue in civil and criminal cases.

Incorporating Cities, Towns and Villages, or changing or amending the charter of any Town, City, or Village.

Providing for the election of Officers in Townships, incorporated Towns or Cities.

Summoning or empaneling Grand or Petit Juries.

Providing for the bonding of cities, towns, precincts, school districts or other municipalities.

Providing for the management of Public Schools.

The opening and conducting of any election, or designating the place of voting.

The sale or mortgage of real estate belonging to minors, or others under disability.

The protection of game or fish.

Chartering or licensing ferries, or toll bridges, remitting fines, penalties or forfeitures, creating, increasing and decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed.

Changing the law of descent.

Granting to any corporation, association, or individual, the right to lay down railroad tracks, or amending existing charters for such purpose.

Granting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever; *Provided,* that notwithstanding any other provisions of this Constitution, the Legislature shall have authority to separately define and classify loans and installment sales, to establish maximum rates within classifications of loans or installment sales which it establishes, and to regulate with respect thereto. In all other cases where a general law can be made applicable, no special law shall be enacted.

**Source:**Neb. Const. art. III, sec. 15 (1875); Amended 1964, Laws 1965, (Appendix), Seventy-fourth Extraordinary Session, 1963, c. 3, sec. 1, p. 1921.

**Annotation**

**1. Valid legislation**
**2. Invalid legislation**
**3. Classification**
**4. Miscellaneous**

**1. Valid legislation**

The provisions of section 79-487 authorizing the transportation of nonprofit private school students on public school buses do not violate the provisions of this section in that they extend

transportation benefits to nonprofit private school students on exactly the same basis and under the same regulations governing the transportation of public school students. State ex rel. Bouc v. School Dist. of City of Lincoln, 211 Neb. 731, 320 N.W.2d 472 (1982).

Section 25-222 relating to limitation of actions for professional negligence does not violate this section. Taylor v. Karrer, 196 Neb. 581, 244 N.W.2d 201 (1976).

Political Subdivisions Tort Claims Act including one year notice of claim requirements and two year limitation for bringing action held constitutional. Campbell v. City of Lincoln, 195 Neb. 703, 240 N.W.2d 339 (1976).

The affected class defined in L.B. 1003, Eighty-second Legislature, First Session, sections 23-2601 to 23-2612 is valid and the act is not a local or special law. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

Statute authorizing transfer of land for school purposes was not void as special legislation. Kaup v. Sweet, 187 Neb. 226, 188 N.W.2d 891 (1971).

Law prohibiting usury defenses by corporation not violative of this section. Snyder v. Woxo, Inc., 185 Neb. 545, 177 N.W.2d 281 (1970).

Prohibiting retailer from accepting credit for purchase of beer from wholesaler while permitting acceptance of credit on purchase of liquor is constitutional. Tom & Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).

Act of Legislature authorizing cities of primary class to annex contiguous or adjacent lands was not local or special law. Campbell v. City of Lincoln, 182 Neb. 459, 155 N.W.2d 444 (1968).

The 1964 amendment to this section was designed and intended to authorize legislation regulating installment sales. Engelmeyer v. Murphy, 180 Neb. 295, 142 N.W.2d 342 (1966).

Statute authorizing transfer of land for school purposes was not special legislation in violation of this section. McDonald v. Rentfrow, 176 Neb. 796, 127 N.W.2d 480 (1964).

Statute providing for limited access to interstate highway was not special legislation. Fougeron v. County of Seward, 174 Neb. 753, 119 N.W.2d 298 (1963).

Brand Inspection Act is not special legislation within meaning of this section. Satterfield v. State, 172 Neb. 275, 109 N.W.2d 415 (1961).

Statute providing for sewer use charge in metropolitan cities did not violate this section. Metropolitan Utilities Dist. v. City of Omaha, 171 Neb. 609, 107 N.W.2d 397 (1961).

Parking Authority Law did not violate constitutional prohibition against special legislation. Omaha Parking Authority v. City of Omaha, 163 Neb. 97, 77 N.W.2d 862 (1956).

Installment Loan Act was not a local or special law regulating interest on money. State ex rel. Beck v. Associates Discount Corp., 162 Neb. 683, 77 N.W.2d 215 (1956).

A statute which becomes operative within thirty days from the date it takes effect as to existing counties in the class, but specifies no machinery by which it shall become immediately operative in counties subsequently entering the class, is not violative of this section. Midwest Popcorn Co. v. Johnson, 152 Neb. 867, 43 N.W.2d 174 (1950).

Statute providing for appointment of district judges as appraisers in condemnation proceeding is reasonable and not inimical to this section. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448 (1945).

Requirement that candidate for office of member of State Railway Commission be not less than thirty years of age does not violate this section. State ex rel. Quinn v. Marsh, 141 Neb. 436, 3 N.W.2d 892 (1942).

Act creating Nebraska Advertising Commission did not violate this section. Power Oil Co. v. Cochran, 138 Neb. 827, 295 N.W. 805 (1941).

If a law is general and operates uniformly and equally on all brought within the relation and circumstances for which it provides, it is not a local or special law in the constitutional sense. Bauer v. State Game, Forestation & Parks Commission, 138 Neb. 436, 293 N.W. 282 (1940).

Acts creating housing authorities was not special legislation. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

Act exempting irrigation companies from building bridges over ditches crossing public roads was discriminatory and void. State ex rel. County of Dawson v. Dawson County Irr. Co., 125 Neb. 836, 252 N.W. 320 (1934).

Statute providing for condemnation of public utilities is not special act regulating courts prohibited hereunder. City of Mitchell v. Western Public Service Co., 124 Neb. 248, 246 N.W. 484 (1933).

Statute providing venue of actions was not in violation of this section. Schwarting v. Ogram, 123 Neb. 76, 242 N.W. 273 (1932).

Act according priority to classes of claims in bank receiverships was not violative of prohibition against special and class legislation. State ex rel Sorensen v. First State Bank of Alliance, 122 Neb. 510, 240 N.W. 750 (1932); State ex rel. Sorensen v. First State Bank of Alliance, 122 Neb. 502, 240 N.W. 747 (1932).

Law permitting fencing with gates across highway was not unconstitutional as class, local, or special legislation. McFadden v. Denter, 118 Neb. 38, 223 N.W. 462 (1929).

Law relating to testing cattle for tuberculosis does not violate provision forbidding special law where general law applicable. State ex rel Spillman v. Wallace, 117 Neb. 588, 221 N.W. 712 (1928).

Law adding ministers to classes exempted from Railroad Anti-Pass Law was not special legislation. State ex rel. Sorensen v. Chicago, B. & Q. R. R. Co., 112 Neb. 248, 199 N.W. 534 (1924).

Law requiring Board of Regents to manufacture and sell hog cholera serum, at cost, to farmers and swine growers, was valid. Fisher v. Board of Regents of Univ. of Neb., 108 Neb. 666, 189 N.W. 161 (1922).

Law authorizing counties of 150,000 or more to issue bonds and levy tax to rebuild courthouse destroyed by fire or riot was valid. Cunningham v. Douglas County, 104 Neb. 405, 177 N.W. 742 (1920).

Law restricting number of candidates appearing on ballot at primary election for delegates to constitutional convention was valid. Baker v. Moorhead, 103 Neb. 811, 174 N.W. 430 (1919).

Law relating to state mineral land leases was valid. Briggs v. Neville, 103 Neb. 1, 170 N.W. 188 (1918).

Prohibiting saloons within two and one half miles of military posts is valid. Rushart v. Crippen, 99 Neb. 682, 157 N.W. 611 (1916).

Law fixing maximum rate of interest and brokerage fee for money lenders was valid. Althaus v. State, 99 Neb. 465, 156 N.W. 1038 (1916).

Law permitting teaching of foreign languages in schools was valid. State ex rel. Thayer v. School Dist. of Nebraska City, 99 Neb. 338, 156 N.W. 641 (1916).

Law regulating hours of service for firemen, but excepting chief and assistant chief was valid. State ex rel. Rea v. City Council of Lincoln, 98 Neb. 634, 154 N.W. 217 (1915).

Law authorizing county board to pay for bridge material, though claim had previously been adjudged invalid in court, was valid. Gibson v. Sherman County, 97 Neb. 79, 149 N.W. 107 (1914).

Act regulating practice of medicine was valid. Mathews v. Hedlund, 82 Neb. 825, 119 N.W. 17 (1908).

Act prohibiting common labor on Sunday was valid. In re Caldwell, 82 Neb. 544, 118 N.W. 133 (1908).

Act relating to taxation of building and loan associations as a class was valid. Nebraska Central Bldg. & Loan Assn. v. Board of Equalization of Lancaster County, 78 Neb. 472, 111 N.W. 147 (1907).

Act providing for election of city officers on particular day was valid. State ex rel. Pentzer v. Malone, 74 Neb. 645, 105 N.W. 893 (1905).

Act giving irrigation companies right to prior appropriation in water, does not contravene Constitution prohibiting special privileges. Farmers Canal Co. v. Frank, 72 Neb. 136, 100 N.W. 286 (1904).

Act regulating hours of employment of females in manufacturing and mechanical

establishments was valid. Wenham v. State, 65 Neb. 394, 91 N.W. 421 (1902).

Act providing for Tax Commissioner in city of specified class was valid. State ex rel. Prout v. Aitken, 62 Neb. 428, 87 N.W. 153 (1901).

General law, though affecting but single county, is not for that reason void as special legislation. State ex rel Douglas County v. Frank, 61 Neb. 679, 85 N.W. 956 (1901).

Permitting prosecution by information in one county and indictment in another is valid. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

Act providing for recovery of attorney's fees to be treated as costs in action against fire insurance company was valid. Insurance Co. of North America v. Bachler, 44 Neb. 549, 62 N.W. 911 (1895).

Ordinance granting exclusive contract for removal of garbage was valid. Coombs v. MacDonald, 43 Neb. 632, 62 N.W. 41 (1895).

Statute allowing reasonable attorney's fee to plaintiff, to be taxed as costs, in suit on insurance policy covering real property was valid. Farmers & Merchants Ins. Co. v. Dobney, 189 U.S. 301 (1903).

Statute relative to practice of veterinary medicine and surgery was not discriminatory hereunder. Peet Stock Remedy Co. v. McMullen, 32 F.2d 669 (8th Cir. 1929).

Cedar Rust Law was not special legislation. Upton v. Felton, 4 F.Supp. 585 (D. Neb. 1932).

**2. Invalid legislation**

Act providing for the reimbursement of funds to depositors of failed industrial loan and investment companies violated this provision. Haman v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991).

An act which permits public grants to students, which must be used in private institutions in this state, is unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

To hold that city of first class without home rule charter may be annexed but one with home rule charter could not be dissolved would violate this section. City of Millard v. City of Omaha, 185 Neb. 617, 177 N.W.2d 576 (1970).

Act which fixed value of agricultural income-producing machinery and equipment as those used by taxpayer in determining federal income tax violated this section. State ex rel. Meyer v. McNeil, 185 Neb. 586, 177 N.W.2d 596 (1970).

Cited legislation violated this section by creating permanently closed class and by being totally arbitrary and unreasonable in method of classification. City of Scottsbluff v. Tiemann, 185 Neb. 256, 175 N.W.2d 74 (1970).

Amendment extending time for appeal under section 77-510, R.R.S.1943, after appeal time had

expired violated this section. In re Valuation and Equalization, 182 Neb. 621, 156 N.W.2d 728 (1968).

Penalty for failure to return property for taxation was special law in violation of this section. Bachus v. Swanson, 179 Neb. 1, 136 N.W.2d 189 (1965).

Legislative Bill 16 of 1963 Special Session violated this section and was unconstitutional in its entirety. Kometscher v. Wade, 177 Neb. 299, 128 N.W.2d 781 (1964).

Statute changing penalty relating to agreements for sale of personal property upon an installment basis held to be special legislation in violation of this section. Davis v. General Motors Acceptance Corp., 176 Neb. 865, 127 N.W.2d 907 (1964).

Designation of retail installment sales contracts as a class, in fixing maximum interest permitted to be charged, was special legislation inhibited by this section. Stanton v. Mattson, 175 Neb. 767, 123 N.W.2d 844 (1963).

Installment Sales Act of 1959 was unconstitutional because it fixed different interest rates on automobiles according to age. Elder v. Doerr, 175 Neb. 483, 122 N.W.2d 528 (1963).

Statute requiring reporting of property in warehouse for taxation and excepting household goods was violative of this section. United States Cold Storage Corp. v. Stolinski, 168 Neb. 513, 96 N.W.2d 408 (1959).

Legislature cannot create liability on part of state for fraud of its officers, and waive statute of limitations for benefit of few within a class. Bordy v. State, 142 Neb. 714, 7 N.W.2d 632 (1943).

Where legislation is of state wide concern, a legislative act applying to part of cities within designated class and not applying to other cities within the same class having a home rule charter violates this section. Axberg v. City of Lincoln, 141 Neb. 55, 2 N.W.2d 613 (1942).

An act of Legislature attempting to waive sovereignty of the state and create liability on state's part in favor of an individual for negligence of state's servants and agents is a special law in contravention of this section. Cox v. State, 134 Neb. 751, 279 N.W. 482 (1938).

Law authorizing counties of more than 150,000 to use portion of gas tax to retire highway construction bonds was invalid, as special legislation. State ex rel. Cone v. Bauman, 120 Neb. 77, 231 N.W. 693 (1930).

Statute purporting to validate proceedings to form light and power districts was invalid as special legislation. Anderson v. Lehmkuhl, 119 Neb. 451, 229 N.W. 773 (1930).

Law regulating public dances on Sunday, but excepting metropolitan cities from its operation, was invalid special legislation. Galloway v. Wolfe, 117 Neb. 824, 223 N.W. 1 (1929).

Proviso authorizing irrigation districts under certain circumstances, to require landowners to construct and maintain laterals and supervise water distribution, was prohibited special legislation. State ex rel. Campbell v. Gering Irr. Dist., 114 Neb. 329, 207 N.W. 525 (1926).

Law imposing liability on counties for destruction of personal property of officers in public buildings by riotous mobs, was void. Court intimates that it would also be void as special legislation. Wakeley v. Douglas County, 109 Neb. 396, 191 N.W. 337 (1922).

Classification of counties for purpose of relocating county seats, if not general and cannot be applied to all counties, is void as special legislation. State ex rel. Conkling v. Kelso, 92 Neb. 628, 139 N.W. 226 (1912).

Statute operating upon county of specified population for particular year was void as special legislation. State v. Scott, 70 Neb. 685, 100 N.W. 812 (1904).

Act fixing day's work at eight hours for labor but exempting farmers or domestic labor, was void as special legislation. Low v. Rees Printing Co., 41 Neb. 127, 59 N.W. 362 (1894).

**3. Classification**

A legislative act constitutes special legislation, violative of this provision, if it (1) creates an arbitrary and unreasonable method of classification or (2) creates a permanently closed class. City of Ralston v. Balka, 247 Neb. 773, 530 N.W.2d 594 (1995).

A legislative act can violate this provision as special legislation (1) by creating a totally arbitrary and unreasonable method of classification or (2) by creating a permanently closed class. MAPCO Ammonia Pipeline v. State Bd. of Equal., 238 Neb. 565, 471 N.W.2d 734 (1991).

A classification which limits the application of the law to a present condition, and leaves no room or opportunity for an increase in the numbers of the class by future growth or development, is special. Haman v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991).

A legislative act can violate this provision as special legislation in one of two ways: (1) by creating a totally arbitrary and unreasonable method of classification, or (2) by creating a permanently closed class. Haman v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991).

The term "class legislation" is a characterization of legislation in contravention of this provision. It is that which makes improper discrimination by conferring privileges on a class arbitrarily selected from a large number of persons standing in the same relation to the privileges, without reasonable distinction or substantial difference. Haman v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991).

A legislative classification must operate uniformly on all within a class which is reasonable. Natural Gas Pipeline Co. v. State Bd. of Equal., 237 Neb. 357, 466 N.W.2d 461 (1991).

The Legislature may, for the purpose of legislating, classify persons, places, objects, or subjects, but such classification must rest upon some difference in situation or circumstance which, in reason, calls for distinctive legislation for the class. Natural Gas Pipeline Co. v. State Bd. of Equal., 237 Neb. 357, 466 N.W.2d 461 (1991).

The Legislature may classify persons under this section as long as, absent implication of a fundamental right or suspect classification, the categorization has a rational basis. Distinctive Printing & Packaging Co. v. Cox, 232 Neb. 846, 443 N.W.2d 566 (1989).

Section 60-1701 contains classifications and exceptions which are unreasonable, arbitrary, and unrelated to the public interest, and is therefore unconstitutional and void in violation of this section. State v. Edmunds, 211 Neb. 380, 318 N.W.2d 859 (1982).

Provisions of legislation creating the Local Government Revenue Fund were unconstitutional because classifications created by the act were arbitrary and unreasonable closed classifications in that they prevented a county from moving from one classification to another and the legislation was, therefore, a special law as to each of the state's counties. State ex rel. Douglas v. Marsh, 207 Neb. 598, 300 N.W.2d 181 (1980).

A bill which treats all those who exceed the fifty-five miles per hour interstate highway limit by no more than ten miles per hour, in different manner, as to fines and costs, than those in other categories is not special legislation. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

The partial exemption from taxation of classes of property specified in section 77-202.25, is not unreasonable, objectionable as discriminatory, or violative hereof. Stahmer v. State, 192 Neb. 63, 218 N.W.2d 893 (1974).

Free port law does not violate constitutional provisions for uniformity and against special privileges. Norden Laboratories, Inc. v. County Board of Equalization, 189 Neb. 437, 203 N.W.2d 152 (1973).

Cigarette Tax Act, sections 77-2602 et seq., 1971 Supp., is not void for unreasonable classification, nor is it a special law. Sandberg v. State, 188 Neb. 335, 196 N.W.2d 501 (1972).

Cited legislation violated this section by creating permanently closed class and by being totally arbitrary and unreasonable in method of classification. City of Scottsbluff v. Tiemann, 185 Neb. 256, 175 N.W.2d 74 (1970).

Prohibiting retailer from accepting credit for purchase of beer from wholesaler while permitting acceptance of credit on purchase of liquor is constitutional. Tom & Jerry, Inc. v. Nebraska Liquor Control Commission, 183 Neb. 410, 160 N.W.2d 232 (1968).

Act of Legislature authorizing cities of primary class to annex contiguous or adjacent lands was not local or special law. Campbell v. City of Lincoln, 182 Neb. 459, 155 N.W.2d 444 (1968).

Provisions of Grid System Act constituted a grant of special privileges and an unlawful splitting of a class, and was unconstitutional. Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966).

Act regulating the profession of engineers and architects sustained as constitutional against claim of discrimination in classification. State ex rel. Meyer v. Knutson, 178 Neb. 375, 133 N.W.2d 577 (1965).

State Employees Retirement Act did not constitute an unreasonable classification and was not unconstitutional as special legislation. Gossman v. State Employees Retirement System, 177 Neb. 326, 129 N.W.2d 97 (1964).

Waiver or remission of penalties by a local or special law is prohibited. Creigh v. Larsen, 171 Neb. 317, 106 N.W.2d 187 (1960).

Constitution recognizes that villages and cities are separate and distinct. Hueftle v. Eustis Cemetery Assn., 171 Neb. 293, 106 N.W.2d 400 (1960).

Amendment to Installment Loan Act creating four classes as to which different penalties were applicable was violative of this section. Thompson v. Commercial Credit Equipment Corp., 169 Neb. 377, 99 N.W.2d 761 (1959).

Arbitrary classification may result in special legislation. United Community Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

Classification according to population is permitted where real and substantial differences exist. Dorrance v. County of Douglas, 149 Neb. 685, 32 N.W.2d 202 (1948).

Classification of business or property for taxation can be permitted only if classification is reasonable and the tax operates uniformly upon all members of the class. Thorin v. Burke, 146 Neb. 94, 18 N.W.2d 664 (1945).

Penalties for nonpayment of taxes are punitive in their nature and their remission by Legislature is not forbidden as arbitrary class legislation. Tukey v. Douglas County, 133 Neb. 732, 277 N.W. 57 (1938).

Act providing for annual tax on fire insurance companies based on gross premiums received by each for insurance written within state was invalid because it did not operate equally and uniformly upon all members of class. Continental Ins. Co. v. Smrha, 131 Neb. 791, 270 N.W. 122 (1936).

Act extending time in which to pay taxes was invalid as based on arbitrary classification. Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317 (1936).

Legislature may classify persons, corporations and property for purposes of legislation, but classification must rest upon real differences in situation and circumstances of members of the class relative to subject of legislation, and the law must operate uniformly on every member of class so designated. State ex rel. Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935).

Classification must be reasonable. Althaus v. State, 94 Neb. 780, 144 N.W. 799 (1913); Livingston Loan & Building Assn. v. Drummond, 49 Neb. 200, 68 N.W. 375 (1896).

If statute operates equally upon all persons or objects of a class so constituted, it is enough. Dougherty v. Kubat, 67 Neb. 269, 93 N.W. 317 (1903).

Statute must be general and uniform throughout the state, and operate alike on all persons and localities of a class reasonably constituted with reference to relations and circumstances provided for. Cleland v. Anderson, 66 Neb. 252, 92 N.W. 306 (1902), affirmed on rehearing 66 Neb. 273, 96 N.W. 212 (1903), affirmed on rehearing 66 Neb. 276, 98 N.W. 1075 (1904).

If law is general and uniform throughout the state, operating alike on all persons and localities of a class, it is not objectionable. Livingston Loan & Bldg. Assn. v. Drummond, 49 Neb. 200, 68 N.W. 375 (1896).

Classification of cities into classes and subclasses for purposes of legislation does not violate Constitution. State ex rel. Jones v. Graham, 16 Neb. 74, 19 N.W. 470 (1884).

**4. Miscellaneous**

In Nebraska, both equal protection and the prohibition against special legislation emanate from this provision, however the test of validity under each is different. Haman v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991).

This provision concerns itself with disparate treatment in much the same manner as does the language of U.S. Const. amend. XIV, which prohibits a state from making or enforcing any law which denies any person within its jurisdiction "the equal protection of the laws." Distinctive Printing & Packaging Co. v. Cox, 232 Neb. 846, 443 N.W.2d 566 (1989).

Requiring registration of mobile homes and assessing a reasonable fee to defray cost of registration and inspection, if any, does not violate constitutional provision requiring uniform and proportionate taxation of personal property. Gates v. Howell, 204 Neb. 256, 282 N.W.2d 22 (1979).

Statute abrogating right of action against auctioneers under conditions stated does not violate this section. State Securities Co. v. Norfolk Livestock Sales Co., Inc., 187 Neb. 446, 191 N.W.2d 614 (1971).

Claim of unconstitutionality of city ordinance regulating labor relations as special law raised but not decided. Midwest Employers Council, Inc. v. City of Omaha, 177 Neb. 877, 131 N.W.2d 609 (1964)

Power to regulate interest on money may not be done by local or special law. State Securities Co. v. Ley, 177 Neb. 251, 128 N.W.2d 766 (1964).

State may enjoin threatened diversion of realty from its original use where it was granted by state to a church for religious purposes. State ex rel. Hunter v. Home Savings & Loan Assn., 137 Neb. 231, 288 N.W. 691 (1939).

Regulation of Nebraska Liquor Control Commission providing that opening and closing hours for sale of beer in rural districts shall be same as those fixed by ordinance in nearest incorporated city or village was valid. Griffin v. Gass, 133 Neb. 56, 274 N.W. 193 (1937).

Refusal of State Railway Commission to grant authority to operate motor buses to a second common carrier in Omaha was not inhibited by this section. Furstenberg v. Omaha & C. B. St. Ry. Co., 132 Neb. 562, 272 N.W. 756 (1937).

Prohibitions in this section are confined to specific cases mentioned, and Legislature may legislate upon any subject not therein prohibited. Stewart v. Barton, 91 Neb. 96, 135 N.W. 381 (1912).

Special privilege is right, power, franchise, immunity, or privilege granted to, or vested in, a person or class of persons to exclusion of others and in derogation of common rights. City of Plattsmouth v. Nebraska Tel. Co., 80 Neb. 460, 114 N.W. 588 (1908).

It is for Legislature to determine as to applicability of general law and propriety of special law. Weston v. Ryan, 70 Neb. 211, 97 N.W. 347 (1903).

Determination of whether act is general or special depends upon substance of act, not its form. State ex rel. Wheeler v. Stuht, 52 Neb. 209, 71 N.W. 941 (1897).

This section is not restriction upon powers of Legislature over subject involved, but rather limitation in respect to manner of exercise of power. Smiley v. MacDonald, 42 Neb. 5, 60 N.W. 355 (1894).

If law is general in terms and restricted to no particular locality, and operates equally upon all of a group of objects, it is not special law. Hunzinger v. State, 39 Neb. 653, 58 N.W. 194 (1894).

No special law can be enacted where general law can be made applicable. In re House Roll 284, 31 Neb. 505, 48 N.W. 275 (1891).

Federal district court would not abstain from deciding whether state banking statute was properly adopted by Nebraska Legislature where analysis of the applicable Nebraska case law left no doubt that such statute was invalid. Nebraskans for Independent Banking, Inc. v. Omaha Nat. Bank, 423 F.Supp. 519 (D. Neb. 1976).

**III-19. Compensation; increase when; extra compensation to public officers and contractors prohibited; retirement benefits; adjustment.**

The Legislature shall never grant any extra compensation to any public officer, agent, or servant after the services have been rendered nor to any contractor after the contract has been entered into, except that retirement benefits of retired public officers and employees may be adjusted to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement.

The compensation of any public officer, including any officer whose compensation is fixed by the Legislature, shall not be increased or diminished during his or her term of office, except that when there are members elected or appointed to the Legislature or the judiciary, or officers elected or appointed to a board or commission having more than one member, and the terms of such members commence and end at different times, the compensation of all members of the Legislature, of the judiciary, or of such board or commission may be increased or diminished at the beginning of the full term of any member thereof.

Nothing in this section shall prevent local governing bodies from reviewing and adjusting vested pension benefits periodically as prescribed by ordinance.

The surviving spouse of any retired public officer, agent, or servant, who has retired under a pension plan or system, shall be considered as having pensionable status and shall be entitled to the same benefits which may, at any time, be provided for or available to spouses of other public officers, agents, or servants who have retired under such pension plan or system at a later date, and such benefits shall not be prohibited by the restrictions of this section or of Article XIII, section 3 of the Constitution of Nebraska.

**Source:**Neb. Const. art. III, sec. 16 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 10; Amended 1952, Laws 1951, c. 159, sec. 1, p. 634; Amended 1968, Laws 1967, c. 322, sec. 1, p. 856; Amended 1972, Laws 1972, LB 1414, sec. 1; Amended 1978, Laws 1978, LB 739, sec. 1; Amended 2000, Laws 2000, LR 291CA, sec. 1.

**Annotation**

**1. Salary increase**
**2. Extra compensation**
**3. Miscellaneous**

**1. Salary increase**

A resolution of a county board fixing the salaries of elected county officers at an amount plus an annual adjustment for changes in the cost of living as determined by an independent federal agency, does not violate this Article and section of the Nebraska Constitution. Shepoka v. Knopik, 201 Neb. 780, 272 N.W.2d 364 (1978).

Laws 1971, L.B. 743, was not effective as to compensation for county attorney whose term had started before it was adopted. State ex rel. Nebraska State Bar Assn. v. Holscher, 193 Neb. 729, 230 N.W.2d 75 (1975).

Act creating State Employees Retirement System did not violate this section. Gossman v. State Employees Retirement System, 177 Neb. 326, 129 N.W.2d 97 (1964).

Salary of executive officer could not be increased during term. State ex rel. Laughlin v. Johnson, 156 Neb. 671, 57 N.W.2d 531 (1953).

Increase or decrease in compensation resulting from a change in population is not prohibited by this section. Hamilton v. Foster, 155 Neb. 89, 50 N.W.2d 542 (1951).

Increase in salaries of county commissioners during their term of office was prohibited by this section. Ramsey v. County of Gage, 153 Neb. 24, 43 N.W.2d 593 (1950).

Legislature has authority to increase salary of officer during term whose compensation has not previously been fixed by legislative enactment. State ex rel. Johnson v. Marsh, 149 Neb. 1, 29 N.W.2d 799 (1947).

Statute providing for garnishment of officers and employees of state and its subdivisions does not violate provision prohibiting increase or diminution of compensation of public officers during term of office. Department of Banking v. Foe, 136 Neb. 422, 286 N.W. 264 (1939).

Action of a county board in determining population of a county as a basis for determining salaries of county officers, without notice and opportunity to such officers to be heard was void. Shambaugh v. Buffalo County, 133 Neb. 46, 274 N.W. 207 (1937).

Salary of any public officer, whether fixed by Constitution or statute, cannot be diminished during term. State ex rel. Day v. Hall, 129 Neb. 699, 262 N.W. 850 (1935); State ex rel. Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935).

Salary of officer created by Constitution could not be diminished during his term. State ex rel.

Randall v. Hall, 125 Neb. 236, 249 N.W. 756 (1933).

**2. Extra compensation**

When the services for which compensation is granted are rendered prior to the date on which the terms of compensation are determined, the benefits awarded are not compensation but are a gratuity, and the payment of such benefits violates this provision. It follows that when the services for which compensation is paid are rendered after the date on which the terms of compensation are established, the benefits awarded are not a gratuity, and the payment of such benefits does not violate this provision. City of Omaha v. City of Elkhorn, 276 Neb. 70, 752 N.W.2d 137 (2008).

The prohibition contained in this section of the Nebraska Constitution is not applicable to the compensation paid to a jailer, even if the duties of jailer are performed by the sheriff. State ex rel. Landanger v. Madison County, 213 Neb. 33, 327 N.W.2d 93 (1982).

Law authorizing payment to county treasurer of 25 cent fee for each applicant for motor vehicle operator's license was not void as increasing salary. Mehrens v. Bauman, 120 Neb. 110, 231 N.W. 701 (1930).

Legislator can receive from state for services as member, or member of committee, only compensation provided by Constitution. In re Appeal of Wilkins, 116 Neb. 748, 219 N.W. 9 (1928).

Pension granted to firemen in municipality is not gratuity nor extra compensation within Constitution. State ex rel. Haberlan v. Love, 89 Neb. 149, 131 N.W. 196 (1911).

**3. Miscellaneous**

Prohibition against a gratuity of compensation after services rendered applies both to the state and all political subdivisions thereof. Retired City Gov. Emp. Club of Omaha v. City of Omaha Emp. Ret. Sys., 199 Neb. 507, 260 N.W.2d 472 (1977).

Judges of the district court of this state are members of a court within meaning of this section. Garrotto v. McManus, 185 Neb. 644, 177 N.W.2d 570 (1970).

Deduction from salary for retirement pay during existing term of judge was violation of this section. Wilson v. Marsh, 162 Neb. 237, 75 N.W.2d 723 (1956).

Office of police judge is constitutional office within this section, and period of an officer holding over, together with regular term, constitutes one term. State ex rel. Gordon v. Moores, 61 Neb. 9, 84 N.W. 399 (1900).

Before 1920 amendment this section applied alone to those officers whose offices were created by the Constitution and did not apply to office of county commissioner. Douglas County v. Timme, 32 Neb. 272, 49 N.W. 266 (1891).

**III-20. Salt springs, coal, oil, minerals; alienation prohibited.**

The salt springs, coal, oil, minerals, or other natural resources on or contained in the land belonging to

the state shall never be alienated; but provision may be made by law for the leasing or development of the same.

**Source:**Neb. Const. art. III, sec. 17 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 11.

**Annotation**

Phrase all mineral rights in challenged statute held declaratory of this section. State ex rel. Belker v. Board of Educational Lands & Funds, 184 Neb. 621, 171 N.W.2d 156 (1969).

Prohibition against alienation of mineral rights in state educational lands did not apply to sale made prior to 1920. Stoller v. State, 171 Neb. 93, 105 N.W.2d 852 (1960).

Object of this section was not to prevent alienation of salt springs where brine yield is of no commercial value and state may convey with reservation that springs shall belong to state if they become commercially valuable. State ex rel. Central Realty & Investment Co. v. McMullen, 119 Neb. 739, 230 N.W. 677 (1930).

Board of Educational Lands and Funds has no jurisdiction over disposal of saline lands. Chicago, B. & Q. R. R. Co. v. Neville, 102 Neb. 817, 170 N.W. 176 (1918); McMurtry v. Engelhardt, 5 Neb. Unof. 271, 98 N.W. 40 (1904).

**III-21. Donation of state lands prohibited; when.**

Lands under control of the State shall never be donated to railroad companies, private corporations or individuals.

**Source:**Neb. Const. art. III, sec. 18 (1875).

**Annotation**

Industrial Development Act of 1961 was sustained as constitutional under constitutional amendment notwithstanding this section. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

**III-22. Appropriations for state; deficiencies; bills for pay of members and officials.**

Each Legislature shall make appropriations for the expenses of the Government. And whenever it is deemed necessary to make further appropriations for deficiencies, the same shall require a two-thirds vote of all the members elected to the Legislature. Bills making appropriations for the pay of members and officers of the Legislature, and for the salaries of the officers of the Government, shall contain no provision on any other subject.

**Source:**Neb. Const. art. III, sec. 19 (1875); Amended 1972, Laws 1971, LB 139, sec. 1.

**Annotation**

**1. Necessity of appropriation**
**2. Subject of appropriation**

**3. Continuing appropriation**
**4. Miscellaneous**
**1. Necessity of appropriation**
Before a state warrant may issue, there must have been an appropriation made by the Legislature for its payment. Fischer v. Marsh, 113 Neb. 153, 202 N.W. 422 (1925).

Appropriation for one biennium cannot be used to supply deficiency of preceding biennium. State ex rel. Western Bridge & Construction Co. v. Marsh, 111 Neb. 185, 196 N.W. 130 (1923).

It is not essential that money be actually drawn during fiscal year, but expenses must have been actually incurred during the period for which appropriation was made. State ex rel. Ledwith v. Brian, 84 Neb. 30, 120 N.W. 916 (1909).

No appropriation will lapse before the end of the first fiscal quarter after adjournment of Legislature unless specifically otherwise directed by act making appropriation. State ex rel. Dales v. Moore, 36 Neb. 579, 54 N.W. 866 (1893).

Unless otherwise limited, the appropriation extends to the end of the first fiscal quarter after the adjournment of the next session of the Legislature. State ex rel. Bullock Mfg. Co. v. Babcock, 22 Neb. 33, 33 N.W. 709 (1887).

**2. Subject of appropriation**
Sections 77-202.25 to 77-202.33 do not constitute an appropriation and are not violative hereof. Stahmer v. State, 192 Neb. 63, 218 N.W.2d 893 (1974).

Imposition of maximum expenditures for personal services on annual basis constitutional. State ex rel. Meyer v. State Board of Equalization & Assessment, 185 Neb. 490, 176 N.W.2d 920 (1970).

Act which allowed pledging of fees and charges received by the commission beyond the biennium violated this section. State ex rel. Meyer v. Duxbury, 183 Neb. 302, 160 N.W.2d 88 (1968).

Act which pledged future receipts of fees for permits and licenses to hunt, trap, and fish for payment of bonds violated this section. State ex rel. Meyer v. Steen, 183 Neb. 297, 160 N.W.2d 164 (1968).

Bills appropriating salaries for state officers cannot contain provisions on any other subject. This limitation applies to all officers of the state government. State ex rel. Hibbard v. Cornell, 60 Neb. 276, 83 N.W. 72 (1900).

**3. Continuing appropriation**
Continuing legislative appropriations are prohibited. Rein v. Johnson 149 Neb. 67, 30 N.W.2d 548 (1947).

Warrants may be drawn on special fund originally established as a continuing appropriation without subsequent biennial appropriation. State ex rel. Ridgell v. Hall, 99 Neb. 89, 155 N.W. 228 (1915), affirmed on rehearing 99 Neb. 95, 156 N.W. 16 (1916), overruled in Rein v. Johnsen, 149 Neb. 67, 30 N.W.2d 548 (1947).

An appropriation under this section cannot be made to continue for a longer period than the biennium. State ex rel. Norfolk Beet-Sugar Co. v. Moore, 50 Neb. 88, 69 N.W. 373 (1896).

**4. Miscellaneous**

Attempt to appropriate funds was not an inducing element to passage of remainder of Tax Appraisal Board Act. Midwest Popcorn Co. v. Johnson, 152 Neb. 867, 43 N.W.2d 174 (1950).

Legislature has authority to increase salary of officer during term whose compensation has not previously been fixed by legislative enactment. State ex rel. Johnson v. Marsh, 149 Neb. 1, 29 N.W.2d 799 (1947).

Excess of gasoline inspection fees paid without protest or demand for refund, lapsed after each biennium, and after having lapsed, court is without power to determine directly the question of their excessiveness. Power Oil Co. v. Cochran, 138 Neb. 827, 295 N.W. 805 (1941).

**III-23. Repealed 1972. Laws 1972, LB 302, sec. 1.**

**III-24. Games of chance, lotteries, and gift enterprises; restrictions; parimutuel wagering on horseraces; bingo games; use of state lottery proceeds.**

(1) Except as provided in this section, the Legislature shall not authorize any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time.

(2) The Legislature may authorize and regulate a state lottery pursuant to subsection (3) of this section and other lotteries, raffles, and gift enterprises which are intended solely as business promotions or the proceeds of which are to be used solely for charitable or community betterment purposes without profit to the promoter of such lotteries, raffles, or gift enterprises.

(3)(a) The Legislature may establish a lottery to be operated and regulated by the State of Nebraska. The proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for the following purposes, as directed by the Legislature:

(i) The first five hundred thousand dollars after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund;

(ii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(iii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be used for education as the Legislature may direct;

(iv) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be

obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(v) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund.

(b) No lottery game shall be conducted as part of the lottery unless the type of game has been approved by a majority of the members of the Legislature.

(4) Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure or (b) the enactment of laws providing for the licensing and regulation of bingo games conducted by nonprofit associations which have been in existence for a period of five years immediately preceding the application for license, except that bingo games cannot be conducted by agents or lessees of such associations on a percentage basis.

**Source:**Neb. Const. art. III, sec. 21 (1875); Amended 1934, Initiative Measure No. 332; Amended 1958, Initiative Measure No. 302; Amended 1962, Laws 1961, c. 248, sec. 1, p. 735; Amended 1968, Laws 1967, c. 307, sec. 1, p. 832; Amended 1988, Laws 1988, LR 15, sec. 1; Amended 1992, Laws 1991, LR 24CA, sec. 1; Amended 2004, Laws 2004, LR 209CA, sec. 1.

**Cross Reference**

**Nebraska Environmental Trust Act,** see section 81-15,167.

**Annotation**

This provision plainly requires that parimutuel wagering on horses must be conducted by an entity licensed to do so and must be conducted by licensees at a racetrack enclosure which is licensed to operate horse races. Wagering that occurs in a detached facility, one that is by definition outside a licensed racetrack enclosure, cannot logically occur within a licensed racetrack enclosure as required by this provision. State ex rel. Stenberg v. Douglas Racing Corp., 246 Neb. 901, 524 N.W.2d 61 (1994).

Free replays are things of value and when obtained on a gambling device constitute property. State ex rel. Spire v. Strawberries, Inc., 239 Neb. 1, 473 N.W.2d 428 (1991).

"Proceeds" means net proceeds and "promoter" means only the person or organization legally responsible for operating a lottery, not each employee thereof. State v. City Betterment Corp., 197 Neb. 575, 250 N.W.2d 601 (1977).

Where registration was required to participate in drawing for prize, the element of consideration was present to constitute a lottery. State ex rel. Line v. Grant, 162 Neb. 210, 75 N.W.2d 611 (1956).

Pinball machine was prohibited as game of chance. Baedaro v. Caldwell, 156 Neb. 489, 56 N.W.2d 706 (1953).

**III-25. Incidental expenses of state officers; specific appropriations always necessary; warrants for money.**

No allowance shall be made for the incidental expenses of any state officer except the same be made by general appropriation and upon an account specifying each item. No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, and on the presentation of a warrant issued as the Legislature may direct, and no money shall be diverted from any appropriation made for any purpose or taken from any fund whatever by resolution.

**Source:**Neb. Const. art. III, sec. 22 (1875); Amended 1964, Laws 1963, c. 302, sec. 2(1), p. 894.

**Annotation**

**1. General appropriation for incidental expenses**
**2. Specific appropriation**
**3. Miscellaneous**

**1. General appropriation for incidental expenses**

Funds in state treasury which may be used in payment of claims against state may be withdrawn only pursuant to appropriation by Legislature. Fischer v. Marsh, 113 Neb. 153, 202 N.W. 422 (1925); State ex rel. Pearson v. Cornell, 54 Neb. 647, 75 N.W. 25 (1898); State ex rel. Graham v. Babcock, 18 Neb. 221, 24 N.W. 683 (1885).

State cannot use appropriation for one biennium to meet deficiency for preceding biennium. State ex rel. Western Bridge & Construction Co. v. Marsh, 111 Neb. 185, 196 N.W. 130 (1923).

Appropriation to pay expenses of State Board of Education was sufficient to include appropriation for salary of secretary. State ex rel. Ludden v. Barton, 88 Neb. 576, 130 N.W. 260 (1911).

Appropriations for incidental expenses of state officer in general appropriation must specify each item for which appropriation is made. State ex rel. James v. Babcock, 22 Neb. 38, 33 N.W. 711 (1887).

A specific appropriation is one expressly providing funds for particular purpose. There can be no implied appropriation under the Constitution. State ex rel. Cline v. Wallichs, 15 Neb. 609, 20 N.W. 110 (1884).

Under an appropriation for current expenses of state government, no money may be drawn for expenses of returning prisoners to penitentiary. State ex rel. Nobes v. Wallichs, 15 Neb. 457, 19 N.W. 641 (1884).

**2. Specific appropriation**

Act itself is sufficient appropriation, at least for current biennium, for expenditure of fees and charges to carry on work of commission. State ex rel. Meyer v. Duxbury, 183 Neb. 302, 160 N.W.2d 88 (1968).

Act providing for refunding of excess grain inspection fees was not in conflict herewith. Bollen v. Price, 129 Neb. 342, 261 N.W. 689 (1935).

Subsequent appropriation of money raised by previous special tax levy amounts to specific appropriation of entire fund. State ex rel. Ledwith v. Searle, 79 Neb. 111, 112 N.W. 380 (1907).

Specific appropriations for salaries of officers fixed by Constitution are not necessary. Weston v. Herdman, 64 Neb. 24, 89 N.W. 384 (1902).

Money paid into the treasury by the state cannot be credited by bookkeeping and thus deducted from the proper charge. It requires specific appropriation to transfer the fund. Providence Washington Ins. Co. v. Weston, 63 Neb. 764, 89 N.W. 253 (1902).

Under general act providing bounty for sugar manufacturers, but carrying no specific appropriation, no such bounty payment can be made. State ex rel. Norfolk Beet-Sugar Co. v. Moore, 50 Neb. 88, 69 N.W. 373 (1896).

Where the Legislature has made a specific appropriation for a special purpose, it is no part of the auditor's duty to inquire as to the justice of such appropriation. State ex rel. Sayre v. Moore, 40 Neb. 854, 59 N.W. 755 (1894).

**3. Miscellaneous**

Sections 77-202.25 to 77-202.33 do not constitute an appropriation and are not violative hereof. Stahmer v. State, 192 Neb. 63, 218 N.W.2d 893 (1974).

This section prevents the diversion of money from any appropriation or the taking thereof from any fund by legislative resolution as distinguished from legislative act. Rein v. Johnson, 149 Neb. 67, 30 N.W.2d 548 (1947).

Noncompliance with this section by Nebraska State Board of Agriculture disclosed that it was not public governmental agency. Crete Mills v. Nebraska State Board of Agriculture, 132 Neb. 244, 271 N.W. 684 (1937).

This section has no reference to any provision which the Legislature might see fit to make regarding custody or investment of money in treasury while waiting disbursement. State v. Hill, 47 Neb. 456, 66 N.W. 541 (1896).

Money may be drawn from the treasury only on vouchers which shall be presented to auditor that he may see that claim is one for which appropriation has been made. State ex rel. Garneau v. Moore, 37 Neb. 507, 55 N.W. 1078 (1893), 56 N.W. 154 (1893).

When appropriation provides for rewards and fees for capture of escaped convicts, etc., no warrant can be drawn to pay sheriff for conveying offenders to reform schools. State ex rel. Ensign v. Wallichs, 12 Neb. 407, 11 N.W. 860 (1882).

## III-26. Privilege of members.

No member of the Legislature shall be liable in any civil or criminal action whatever for words spoken in debate.

**Source:**Neb. Const. art. III, sec. 23 (1875).

**III-27. Acts take effect after three months; emergency bills; session laws.**

No act shall take effect until three calendar months after the adjournment of the session at which it passed, unless in case of emergency, which is expressed in the preamble or body of the act, the Legislature shall by a vote of two-thirds of all the members elected otherwise direct. All laws shall be published within sixty days after the adjournment of each session and distributed among the several counties in such manner as the Legislature may provide.

**Source:**Neb. Const. art. III, sec. 24 (1875); Amended 1972, Laws 1971, LB 126, sec. 1; Amended 1998, Laws 1997, LR 17CA, sec. 1.

**Annotation**

**1. Without emergency clause**
**2. With emergency clause**
**3. Miscellaneous**

**1. Without emergency clause**

Without an emergency clause, a legislative act takes effect three calendar months after adjournment of Legislature. Summerville v. North Platte Valley Weather Control Dist., 170 Neb. 46, 101 N.W.2d 748 (1960).

While act passed without emergency clause takes effect three calendar months after adjournment of session, operation of act can be postponed to a later date. Wilson v. Marsh, 162 Neb. 237, 75 N.W.2d 723 (1956).

Statute without emergency clause does not become operative until three calendar months after adjournment of the Legislature which enacted it. Bainter v. Appel, 124 Neb. 40, 245 N.W. 16 (1932).

Following clause of act "this act shall take effect on and after its passage and approval" does not express an emergency. State v. Pacific Express Co., 80 Neb. 823, 115 N.W. 619 (1908).

Act containing no emergency clause does not become operative until after three calendar months from adjournment of Legislature. State ex rel. City Water Co. v. City of Kearney, 49 Neb. 325, 68 N.W. 533 (1896).

**2. With emergency clause**

An act adopted with an emergency clause by vote of two-thirds of all members elected to the Legislature and vetoed by the Governor becomes effective when passed over the veto by vote of three-fifths of the members elected. Sandberg v. State, 188 Neb. 335, 196 N.W.2d 501 (1972).

An act of the Legislature stating an emergency, without stating the nature thereof, is sufficient. Read v. City of Scottsbluff, 179 Neb. 410, 138 N.W.2d 471 (1965).

When a statute passes with an emergency clause in computing the time it takes effect, the day of its passage is excluded, and it goes into effect the next day. Wilson & Company, Inc. v. Otoe County et al., 140 Neb. 518, 300 N.W. 415 (1941).

Where two acts are companion laws and must be construed together, the fact that one has an emergency clause does not operate to put companion law into effect prior to date set by Constitution. Lincoln Tel. & Tel. Co. v. Albers, 126 Neb. 329, 253 N.W. 429 (1934).

**3. Miscellaneous**

This provision provides the only restriction on the Legislature's power to determine the effective date of its enactments. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

Right of referendum extends to emergency acts of Legislature. Klosterman v. Marsh, 180 Neb. 506, 143 N.W.2d 744 (1966).

Interest on forbearance of money computed at the legal rate on date claim arose. Wheaton v. Aetna Life Ins. Co., 128 Neb. 583, 259 N.W. 753 (1935).

Automobile guest law does not affect a cause of action arising after Legislature adjourned but before law took effect. Roh v. Opocensky, 125 Neb. 551, 251 N.W. 102 (1933).

Act may specifically provide for separate provisions taking effect at different dates. State ex rel. Wheeler v. Stuht, 52 Neb. 209, 71 N.W. 941 (1897).

Term "calendar month" denotes period terminating with day of succeeding month, numerically corresponding to day of its beginning, less one. McGinn v. State, 46 Neb. 427, 65 N.W. 46 (1895).

Legislative act may provide that it shall not apply until expiration of terms of incumbent officers. Hopkins v. Scott, 38 Neb. 661, 57 N.W. 391 (1894).

**III-28. Repealed 1934. Initiative Measure No. 330.**

**III-29. Legislative authority in emergencies due to enemy attack upon United States.**

(1). In order to insure continuity of state and local governmental operations in periods of emergency resulting from enemy attack upon the United States, or the imminent threat thereof, the Legislature shall have the power and the immediate duty, notwithstanding any other provision to the contrary in this Constitution, to provide by law for:

(a) The prompt and temporary succession to the powers and duties of all public offices, of whatever nature and whether filled by election or appointment, the incumbents of which, after an attack, may be or become unavailable or unable to carry on the powers and duties of such offices;

(b) The convening of the Legislature into general or extraordinary session, upon or without call by the Governor, during or after a war or enemy caused disaster occurring in the United States; and, with respect to any such emergency session, the suspension or temporary change of the provisions of this Constitution or of general law relating to the length and purposes of any legislative session or prescribing the specific proportion or number of legislators whose presence or vote is necessary to constitute a quorum or to accomplish any legislative act or function;

(c) The selection and changing from time to time of a temporary state seat of government, of temporary county seats, and of temporary seats of government for other political subdivisions; to be used if made

necessary by enemy attack or imminent threat thereof;

(d) The determination, selection, reproduction, preservation, and dispersal of public records necessary to the continuity of governmental operations in the event of enemy attack or imminent threat thereof; and

(e) Such other measures and procedures as may be necessary and proper for insuring the continuity of governmental operations in the event of enemy attack or imminent threat thereof.

(2). In the exercise of the powers hereinbefore conferred, the Legislature shall in all respects conform to the requirements of this Constitution except to the extent that, in the judgment of the Legislature, so to do would be impracticable or would admit of undue delay.

**Source:**Neb. Const. art. III, sec. 29 (1960); Adopted 1960, Laws 1959, c. 234, sec. 1, p. 815.

**III-30. Legislature to pass necessary laws.**

The Legislature shall pass all laws necessary to carry into effect the provisions of this constitution.

**Source:**Neb. Const. art. XVI, sec. 20 (1875); Transferred by Constitutional Convention, 1919-1920, art. XVII, sec. 6; Neb. Const. art. XVII, sec. 6 (1997); Amended 1998, Laws 1997, LR 17CA, sec. 2.

**Annotation**

Legislative power governing the rights and duties of persons is conferred entirely on the elected legislative body. Terry Carpenter, Inc. v. Nebraska Liquor Control Commission, 175 Neb. 26, 120 N.W.2d 374 (1963).

Legislature must provide standards for distribution of school funds. School Dist. No. 39 of Washington County v. Decker, 159 Neb. 693, 68 N.W.2d 354 (1955).

**IV-1. Executive departments; officers; when elected; terms; eligibility; books to be kept at seat of government; residence of officers; heads of departments; appointments.**

The executive officers of the state shall be the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, and the heads of such other executive departments as set forth herein or as may be established by law. The Legislature may provide for the placing of the above named officers as heads over such departments of government as it may by law establish.

The Governor, Lieutenant Governor, Attorney General, Secretary of State, Auditor of Public Accounts, and State Treasurer shall be chosen at the general election held in November 1974, and in each alternate even-numbered year thereafter, for a term of four years and until their successors shall be elected and qualified.

Each candidate for Governor shall select a person to be the candidate for Lieutenant Governor on the general election ballot. In the general election one vote shall be cast jointly for the candidates for Governor and Lieutenant Governor. The Governor shall be ineligible to the office of Governor for four years next after the expiration of two consecutive terms for which he or she was elected.

The records, books, and papers of all executive officers shall be kept at the seat of government. Executive officers shall reside within the State of Nebraska during their respective terms of office.

Officers in the executive department of the state shall perform such duties as may be provided by law.

The heads of all executive departments established by law, other than those to be elected as provided herein, shall be appointed by the Governor, with the consent of a majority of all members elected to the Legislature, but officers so appointed may be removed by the Governor. Subject to the provisions of this Constitution, the heads of the various executive or civil departments shall have power to appoint and remove all subordinate employees in their respective departments.

**Source:**Neb. Const. art. V, sec. 1 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 13; Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 1; Amended 1936, Laws 1935, c. 188, sec. 1, p. 694; Amended 1952, Laws 1951, c. 164, sec. 2(2), p. 645; Amended 1958, Laws 1957, c. 213, sec. 1, p. 748; Amended 1962, Laws 1961, c. 249, sec. 1, p. 736; Amended 1964, Laws 1963, c. 296, sec. 1, p. 883; Amended 1966, Laws 1965, c. 300, sec. 1, p. 846; Amended 1970, Laws 1969, c. 417, sec. 1, p. 1428; Amended 1998, Laws 1997, LR 8CA, sec. 1; Amended 2000, Laws 1999, LR 14CA, sec. 1.

**Annotation**

**1. Term of office**
**2. Nature of office or department**
**3. Miscellaneous**

**1. Term of office**

Period for which an executive officer holds over is part of the term for which he was elected. State ex rel. Gordon v. Moores, 61 Neb. 9, 84 N.W. 399 (1900).

"Until his successor is elected and qualified" imposes the duty upon incumbent Governor to hold over until his successor is elected and qualified. State ex rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739 (1891), 51 N.W. 602 (1892).

**2. Nature of office or department**

The officers referred to in this section are the executive officers of the state. Sorensen v. Swanson, 181 Neb. 205, 147 N.W.2d 620 (1967).

Heads of all executive departments are required to be appointed by the Governor. State ex rel. Beck v. Obbink, 172 Neb. 242, 109 N.W.2d 288 (1961).

Attorney General is an executive officer. State ex rel. Caldwell v. Peterson, 153 Neb. 402, 45 N.W.2d 122 (1950).

Merit System Act did not create an executive department. Sommerville v. Johnson, 149 Neb. 167, 30 N.W.2d 577 (1948).

Member of Nebraska Liquor Control Commission is not the head of an executive department. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

Department of Agriculture and Inspection is an executive department established by law. State ex rel. Howard v. Marsh, 146 Neb. 750, 21 N.W.2d 503 (1946).

Secretary of State is a constitutional officer. State ex rel. Brazda v. Marsh, 141 Neb. 817, 5 N.W.2d 206 (1942).

The Insurance Department is not an agency created by the Constitution but is an executive department of government created by the Legislature under constitutional authority. Clark v. Lincoln Liberty Life Ins. Co., 139 Neb. 65, 296 N.W. 449 (1941).

The constitutional provision creating the State Railway Commission is an independent part of the Constitution and not an amendment to the executive, legislative, or judicial articles thereof. Furstenberg v. Omaha & C. B. St. Ry. Co., 132 Neb. 562, 272 N.W. 756 (1937).

Nebraska State Board of Agriculture is not a part of executive branch of government, but is a private corporation. Crete Mills v. Nebraska State Board of Agriculture, 132 Neb. 244, 271 N.W. 684 (1937).

**3. Miscellaneous**

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. American Fed. of S., C. & M. Emp. v. Department of Public Institutions, 195 Neb. 253, 237 N.W.2d 841 (1976).

The 1920 amendment to this section was deemed essential to include heads of other executive departments. Swanson v. Sorensen, 181 Neb. 312, 148 N.W.2d 197 (1967).

Legislature has no power to provide for suspension or removal of a constitutional officer where the Constitution creates the office, fixes its terms, and the grounds and manner of removal. Laverty v. Cochran, 132 Neb. 118, 271 N.W. 354 (1937).

Amendment abolishing office of Commissioner of Public Lands and Buildings was properly submitted and adopted. Swanson v. State, 132 Neb. 82, 271 N.W. 264 (1937).

Where Department of Insurance is appointed receiver of insurance company for purpose of liquidation, it becomes, for that purpose, subject to orders of the court rather than of the Governor. State ex rel. Good v. National Old Line Life Ins. Co., 129 Neb. 473, 261 N.W. 902 (1935).

This section secures to electors the right to vote at all elections for state officers. State ex rel. Adair v. Drexel, 74 Neb. 776, 105 N.W. 174 (1905).

State Treasurer must reside at seat of government, which is state capital. State v. Hill, 38 Neb. 698, 57 N.W. 548 (1894).

If constitutional provision, either directly or by implication, imposes duty upon officer or officers, no legislation is necessary to require the performance of such duty. State ex rel. City of Lincoln v. Babcock, 19 Neb. 230, 27 N.W. 98 (1886).

**IV-2. Governor; Lieutenant Governor; eligibility; qualifications; appointive officers, ineligible for other office.**

No person shall be eligible to the office of Governor, or Lieutenant Governor, who shall not have attained the age of thirty years, and who shall not have been for five years next preceding his election a

resident and citizen of this state and a citizen of the United States. None of the appointive officers mentioned in this article shall be eligible to any other state office during the period for which they have been appointed.

**Source:**Neb. Const. art. V, sec. 2 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 13; Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 2; Amended 1962, Laws 1961, c. 250, sec. 1, p. 738; Amended 1966, Laws 1965, c. 291, sec. 1, p. 832.

**Annotation**

Railway commissioner did not fall within the prohibition of this section. Swanson v. Sorensen, 181 Neb. 312, 148 N.W.2d 197 (1967).

Member of Nebraska Liquor Control Commission is not precluded by this section from being appointed to the office of district judge. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

Head of an executive department is ineligible to be a candidate for the office of Governor during term for which he was appointed. State ex rel. Howard v. Marsh, 146 Neb. 750, 21 N.W.2d 503 (1946).

Unlike officers designated in this section, there is no requirement that candidate for office of Secretary of State be a resident of the state, or possess the qualifications of an elector prior to elections. State ex rel. Brazda v. Marsh, 141 Neb. 817, 5 N.W.2d 206 (1942).

No presumption arises from this section that the Legislature should be without power to require that members of the State Railway Commission should possess reasonable qualifications as a condition of eligibility to office. State ex rel. Quinn v. Marsh, 141 Neb. 436, 3 N.W.2d 892 (1942).

Under former law, Lieutenant Governor, during term for which he was elected, was ineligible to office of Governor for succeeding term. State ex rel. McKelvie v. Wait, 95 Neb. 806, 146 N.W. 1048 (1914).

Candidate for Governor was citizen of United States, although of foreign birth. Boyd v. State ex rel Thayer, 143 U.S. 135 (1892), reversing State ex rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739 (1891), 51 N.W. 602 (1892).

**IV-3. Treasurer; ineligibility.**

The treasurer shall be ineligible to the office of treasurer, for two years next after the expiration of two consecutive terms for which he was elected.

**Source:**Neb. Const. art. V, sec. 3 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 3; Amended 1992, Initiative Measure No. 407; Amended 1994, Initiative Measure No. 408. **Note:** The changes made to Article IV, section 3, of the Constitution of Nebraska by Initiative 407 in 1992 have been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 245 Neb. 907, 515 N.W.2d 788 (1994).**Note:** The changes made to Article IV, section 3, of the Constitution of Nebraska by Initiative 408 in 1992 have been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

**IV-4. Election returns; canvass by Legislature; conduct of election contests.**

The returns of every election for the officers of the executive department shall be sealed up and transmitted by the returning officers to the Secretary of State, directed to the Speaker of the Legislature, who shall immediately after the organization of the Legislature, and before proceeding to other business, open and publish the same in the presence of a majority of the members of the Legislature. The person having the highest number of votes for each of said offices shall be declared duly elected; but if two or more have an equal and the highest number of votes, the Legislature shall choose one of such persons for said office. The conduct of election contests for any of said offices shall be in such manner as may be prescribed by law.

**Source:**Neb. Const. art. V, sec. 4 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 4; Amended 1960, Laws 1959, c. 236, sec. 1, p. 820; Amended 1972, Laws 1971, LB 340, sec. 1.

**Annotation**

The 1960 amendment of this section did not purport to be and is not amendatory of the limited original jurisdiction of the Supreme Court. Sorensen v. Swanson, 181 Neb. 205, 147 N.W.2d 620 (1967).

Canvass of returns of election for officers of executive department must be made by the Legislature. State ex rel. Caldwell v. Peterson, 153 Neb. 402, 45 N.W.2d 122 (1950).

Returns of election upon constitutional amendment must be directed to Speaker and votes canvassed by Legislature. State ex rel. Oldham v. Dean, 84 Neb. 344, 121 N.W. 719 (1909).

Joint resolution in contest proceedings requires signature of presiding officer of House and Senate, also the Governor's. In re Contest Proceeding, 31 Neb. 262, 47 N.W. 923 (1891).

Speaker must open and publish returns of general election even though directed by Legislature not to do so. State ex rel. Benton v. Elder, 31 Neb. 169, 47 N.W. 710 (1891).

**IV-5. Impeachment.**

A civil officer of this state shall be liable to impeachment for any misdemeanor in office or for any misdemeanor in pursuit of such office.

**Source:**Neb. Const. art. V, sec. 5 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 5; Amended 2012, Laws 2012, LR19CA, sec. 1.

**Annotation**

The phrase "misdemeanor in office" is a term of art, and the word "misdemeanor" in this phrase is not used as it is in a criminal context. An officer's conduct need not rise to the level of an indictable offense to be considered an impeachable offense. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

An act or omission for which an officer may be impeached and removed from office must relate to the duties of the office. A misdemeanor in office may consist of a violation of some provision

in the Constitution or a statute, willful neglect of duty done with a corrupt intention, or negligence so gross and disregard of duty so flagrant as to warrant an inference that it was willful and corrupt. A violation of the Code of Professional Responsibility is not, as such, an impeachable offense. State v. Douglas, 217 Neb. 199, 349 N.W.2d 870 (1984).

Holder of constitutional office may be removed only by impeachment. Fitzgerald v. Kuppinger, 163 Neb. 286, 79 N.W.2d 547 (1956).

County judge can be removed only by impeachment. Conroy v. Hallowell, 94 Neb. 794, 144 N.W. 895 (1913).

The word "term" does not include time for which office is held under appointment. Dodson v. Bowlby, 78 Neb. 190, 110 N.W. 698 (1907).

Misdemeanor under this section is violation of positive statute or Constitution amounting to crime, or willful neglect of duty with corrupt intent or gross negligence inferring willful or corrupt intent. State v. Hastings, 37 Neb. 96, 55 N.W. 774 (1893).

Impeachment power cannot be delegated by Legislature. State v. Leese, 37 Neb. 92, 55 N.W. 798 (1893).

Officer cannot be impeached after his term has expired. State v. Hill, 37 Neb. 80, 55 N.W. 794 (1893).

**IV-6. Supreme executive power.**

The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed and the affairs of the state efficiently and economically administered.

**Source:**Neb. Const. art. V, sec. 6 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 13; Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 6.

**Annotation**

Legislature cannot through appropriations exercise or invade constitutional rights or powers of executive; Legislature cannot administer appropriations once made. State ex rel. Meyer v. State Board of Equalization & Assessment, 185 Neb. 490, 176 N.W.2d 920 (1970).

The supreme executive power is vested in the Governor. Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966); State ex rel. Beck v. Obbink, 172 Neb. 242, 109 N.W.2d 288 (1961).

All officers and employees of executive department who are not appointed for a definite term are removable at will of Governor. State ex rel. Beck v. Young, 154 Neb. 588, 48 N.W.2d 677 (1951).

As to the executive department, the supreme power is vested in the Governor. State ex rel. Howard v. Marsh, 146 Neb. 750, 21 N.W.2d 503 (1946).

**IV-7. Message by Governor; budget; contents; budget bill; preparation; appropriations not to be in excess of budget; exception; excess subject to veto.**

The Governor may, at the commencement of each session, and at the close of his term of office and whenever the Legislature may require, give by message to the Legislature information of the condition of the state, and shall recommend such measures as he shall deem expedient. At a time fixed by law, he shall present, by message, a complete itemized budget of the financial requirements of all departments, institutions and agencies of the state and a budget bill to be introduced by the Speaker of the Legislature at the request of the Governor. Said budget bill shall be prepared with such expert assistance and under such regulations as may be required by the Governor. No appropriations shall be made in excess of the recommendation contained in such budget including any amendment the Governor may make thereto unless by three-fifths vote of the Legislature, and such excess so approved shall be subject to veto by the Governor.

**Source:**Neb. Const. art. V, sec. 7 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 13; Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 7; Amended 1964, Laws 1963, c. 302, sec. 2(2), p. 895; Amended 1972, Laws 1971, LB 301, sec. 1.

**Annotation**

Appropriations in excess of recommendation which did not receive two-thirds vote on final passage invalid; section applies to all departments, institutions, and agencies of state in being at commencement of legislative session. State ex rel. Meyer v. State Board of Equalization & Assessment, 185 Neb. 490, 176 N.W.2d 920 (1970).

Requirement of three-fifths vote applies only to increases in amount for departments, institutions and agencies in existence at the time that Governor is required to make budget recommendations. Mekota v. State Board of Equalization & Assessment, 146 Neb. 370, 19 N.W.2d 633 (1945).

Appropriation bill containing items in excess of budget recommendation, adopted by three-fifths vote of both houses, but without separate three-fifths vote on each such increased item was legally enacted and not subject to Governor's veto. Elmen v. State Board of Equalization and Assessment, 120 Neb. 141, 231 N.W. 772 (1930).

**IV-8. Special sessions.**

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together.

**Source:**Neb. Const. art. V, sec. 8 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 8.

**Annotation**

Under this section the Governor may, during the Legislature's special session convened pursuant to a gubernatorial proclamation, submit by an appropriate amended proclamation any additional subjects for valid legislation to be enacted at such special session of the Legislature. Jaksha v. State, 222 Neb. 690, 385 N.W.2d 922 (1986).

Amendments to Liquor Control Act, made by chapter 5, Seventy-fourth Extraordinary Session of the Legislature, were unconstitutional because not within Governor's call. Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 131 N.W.2d 134 (1964).

Governor's call of special session of the Legislature was sufficient. State Securities Co. v. Ley, 177 Neb. 251, 128 N.W.2d 766 (1964).

Amendments made to election laws at the 1944 extraordinary session of the Legislature were within the scope of the proclamation of the Governor calling the session. State ex rel. Baldwin v. Strain, 152 Neb. 763, 42 N.W.2d 796 (1950).

Special session can transact no business except that included in objects of proclamation, calling the session. Statement in proclamation asking for revision or amendment of general incorporation law will include in its scope the regulation, control and government of railroad companies. Chicago, B. & Q. R. R. Co. v. Wolfe, 61 Neb. 502, 86 N.W. 441 (1901).

Proclamation calling special session may be revoked by Governor. People ex rel. Tennant v. Parker, 3 Neb. 409 (1873).

**IV-9. Repealed 1934. Initiative Measure No. 330.**

**IV-10. Governor to appoint officers; removal.**

The Governor shall appoint with the approval of a majority of the Legislature, all persons whose offices are established by the Constitution, or which may be created by law, and whose appointment or election is not otherwise by law or herein provided for; and no such person shall be appointed or elected by the Legislature. The Governor shall have power to remove, for cause and after a public hearing, any person whom he may appoint for a term except officers provided for in Article V of the Constitution, and he may declare his office vacant, and fill the same as herein provided as in other cases of vacancy. The Governor shall have power to remove any other person whom he appoints at any time and for any reason.

**Source:**Neb. Const. art. V, sec. 10 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 10; Amended 1972, Laws 1972, LB 302, sec. 1.

**Annotation**

**1. Power of appointment**
**2. Power of removal**
**3. Procedure**
**4. Miscellaneous**
**1. Power of appointment**
Designation by Legislature of University of Nebraska officers as members of Natural Resources Commission was a legislative appointment in violation of Constitution; but designation of Director of Water Resources was valid as simply adding to the duties of a state officer. Neeman v. Nebraska Nat. Resources Commission, 191 Neb. 672, 217 N.W.2d 166 (1974).

Power of appointment and removal of officers is in the Governor except as limited by this section. Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966).

Governor has power to appoint heads of executive departments. State ex rel. Howard v. Marsh, 146 Neb. 750, 21 N.W.2d 503 (1946).

Legislature after it has created an office cannot itself fill it. State ex rel. Hensley v. Plasters, 74 Neb. 652, 105 N.W. 1092 (1905).

Constitution prohibits appointment or election of officers by Legislature. State ex rel. Horne v. Holcomb, 46 Neb. 88, 64 N.W. 437 (1895).

**2. Power of removal**

The Governor is empowered to remove any officer appointed by him for incompetency, neglect of duty, or malfeasance in office. State ex rel. Beck v. Obbink, 172 Neb. 242, 109 N.W.2d 288 (1961).

Power to remove member of Liquor Control Commission is derived from this section. State ex rel. Beck v. Young, 154 Neb. 588, 48 N.W.2d 677 (1951).

In addition to the power of appointment, the Governor has the power of removal in case of incompetency, neglect of duty, or malfeasance in office. State ex rel. Howard v. Marsh, 146 Neb. 750, 21 N.W.2d 503 (1946).

Lieutenant Governor cannot, during mere temporary absence of Governor from the state, remove from office appointees of the Governor. Johnson v. Johnson, 141 Neb. 239, 3 N.W.2d 414 (1942).

**3. Procedure**

In a hearing for removal of an officer, the charge must be reasonably definite, notice of hearing must be given, and an opportunity to defend afforded. State ex rel. Meyer v. Sorrell, 174 Neb. 340, 117 N.W.2d 872 (1962).

Three steps are contemplated, namely: Nomination, confirmation, and appointment. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

**4. Miscellaneous**

This section does not apply to county treasurer whom the Legislature designates as ex officio city treasurer. Cathers v. Hennings, 76 Neb. 295, 107 N.W. 586 (1906).

This section applies only to officers mentioned in Constitution. It has no application to municipal officers. State ex rel. Hastings v. Smith, 35 Neb. 13, 52 N.W. 700 (1892).

This section does not apply to police commissioner of municipality as created by Legislature. State ex rel. Hastings v. Smith, 35 Neb. 13, 52 N.W. 700 (1892).

## IV-11. Elected state officer; vacation of office; Governor fill by appointment; term.

If any elected state office created by this Constitution, except offices provided for in Article V of this Constitution, shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to

fill that office by appointment, and the appointee shall hold the office until his successor shall be elected and qualified in such manner as may be provided by law.

**Source:**Neb. Const. art. V, sec. 11 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 11; Amended 1962, Laws 1961, c. 252, sec. 2(1), p. 741; Amended 1972, Laws 1972, LB 302, sec. 1; Amended 1980, Laws 1979, LR 5, sec. 1.

### IV-12. Nonelective state officers; vacation; Governor; fill the office by appointment; approval by Legislature.

If any nonelective state office, except offices provided for in Article V of this Constitution, shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill that office by appointment. If the Legislature is in session, such appointment shall be subject to the approval of a majority of the members of the Legislature. If the Legislature is not in session, the Governor shall make a temporary appointment until the next session of the Legislature, at which time a majority of the members of the Legislature shall have the right to approve or disapprove the appointment. All appointees shall hold their office until their successors shall be appointed and qualified. No person after being rejected by the Legislature shall be again nominated for the same office at the same session, unless at request of the Legislature, or be appointed to the same office during the recess or adjournment of the Legislature.

**Source:**Neb. Const. art. V, sec. 12 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 12; Amended 1972, Laws 1972, LB 302, sec. 1.

**Annotation**

Judges appointed under the merit plan do not hold temporary appointments. Garrotto v. McManus, 185 Neb. 644, 177 N.W.2d 570 (1970).

During recess of Legislature, appointment to fill vacancy in nonelective office is temporary. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

### IV-13. Board of parole; members; powers; reprieves; proceedings; power to pardon; limitations.

The Legislature shall provide by law for the establishment of a Board of Parole and the qualifications of its members. Said board, or a majority thereof, shall have power to grant paroles after conviction and judgment, under such conditions as may be prescribed by law, for any offenses committed against the criminal laws of this state except treason and cases of impeachment. The Governor, Attorney General and Secretary of State, sitting as a board, shall have power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations in all cases of conviction for offenses against the laws of the state, except treason and cases of impeachment. The Board of Parole may advise the Governor, Attorney General and Secretary of State on the merits of any application for remission, respite, reprieve, pardon or commutation but such advice shall not be binding on them. The Governor shall have power to suspend the execution of the sentence imposed for treason until the case can be reported to the Legislature at its next session, when the Legislature shall either grant a pardon, or commute the sentence or direct the execution, or grant a further reprieve.

**Source:**Neb. Const. art. V, sec. 13 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 13; Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 13; Amended 1968, Laws 1967, c. 319, sec. 1, p. 852.

**Annotation**

This provision clearly entrusts the power of commutation to the Board of Pardons. State v. Bainbridge, 249 Neb. 260, 543 N.W.2d 154 (1996).

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. State v. Houston, 196 Neb. 724, 246 N.W.2d 63 (1976).

This section governs paroles after conviction and sentence and Post Conviction Act not available for that purpose. State v. Carpenter, 186 Neb. 605, 185 N.W.2d 663 (1971).

Limitation on power of Governor to reprieve did not prevent granting of successive reprieves which in aggregate might exceed thirty days. Simmons v. Fenton, 113 Neb. 768, 205 N.W. 296 (1925).

The word "offenses" is equivalent to "crimes." Governor cannot pardon until after conviction by a court. Champion v. Gillan, 79 Neb. 364, 112 N.W. 585 (1907).

Pardon is free gift from supreme authority confided to chief magistrate. Act authorizing justice of the peace to remit penalty for misdemeanor is not granting pardoning power. Pleuler v. State, 11 Neb. 547, 10 N.W. 481 (1881).

**IV-14. Governor to be commander-in-chief of militia.**

The Governor shall be commander-in-chief of the military and naval forces of the state (except when they shall be called into the service of the United States) and may call out the same to execute the laws, suppress insurrection, and repel invasion.

**Source:**Neb. Const. art. V, sec. 14 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 14.

**Annotation**

Member of national guard upon enlistment became subject to the provisions of this section. Lind v. Nebraska National Guard, 144 Neb. 122, 12 N.W.2d 652 (1944).

**IV-15. Bills to be presented to Governor; approval; procedure; disapproval or reduction of items of appropriation; passage despite disapproval or reduction.**

Every bill passed by the Legislature, before it becomes a law, shall be presented to the Governor. If he approves he shall sign it, and thereupon it shall become a law, but if he does not approve or reduces any item or items of appropriations, he shall return it with his objections to the Legislature, which shall enter the objections at large upon its journal, and proceed to reconsider the bill with the objections as a whole, or proceed to reconsider individually the item or items disapproved or reduced. If then three-fifths of the members elected agree to pass the bill with objections it shall become a law, or if three-fifths of the members elected agree to repass any item or items disapproved or reduced, the bill with such repassage shall become a law. In all cases the vote shall be determined by yeas and nays, to be

entered upon the journal. Any bill which shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it; unless the Legislature by their adjournment prevent its return; in which case it shall be filed, with his objections, in the office of the Secretary of State within five days after such adjournment, or become a law. The Governor may disapprove or reduce any item or items of appropriation contained in bills passed by the Legislature, and the item or items so disapproved shall be stricken therefrom, and the items reduced shall remain as reduced unless the Legislature has reconsidered the item or items disapproved or reduced and has repassed any such item or items over the objection of the Governor by a three-fifths approval of the members elected.

**Source:**Neb. Const. art. V, sec. 15 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 15; Amended 1972, Laws 1971, LB 301, sec. 1; Amended 1974, Laws 1974, LB 1034, sec. 1; Amended 1976, Laws 1975, LB 17, sec. 1.

**Annotation**

It is not the publication by the Revisor of Statutes which creates a law. It is adoption by the Legislature and the Governor's signature which cause a law to be enacted. State ex rel. Wright v. Pepperl, 221 Neb. 664, 380 N.W.2d 259 (1986).

This section does not give the Governor power to return a bill to the Legislature as a "clerical function". Where Governor returns a legislative bill to the Legislature with his objections, action constitutes a veto, regardless of reasons stated in the accompanying message. Center Bank v. Dept. of Banking & Finance, 210 Neb. 227, 313 N.W.2d 661 (1981).

A legislative bill, passed with an emergency clause, vetoed by the Governor, is within the ambit of this section and requires only a three-fifths vote to override the veto. Sandberg v. State, 188 Neb. 335, 196 N.W.2d 501 (1972).

Governor's veto of items of appropriation bill in excess of budget recommendation was invalid, where bill, as a whole, was adopted by three-fifths vote of both houses. Elmen v. State Board of Equalization and Assessment, 120 Neb. 141, 231 N.W. 772 (1930).

Governor, as respects approval or veto of bills, acts as part of lawmaking power. State ex rel. Crocker v. Junkin, 79 Neb. 532, 113 N.W. 256 (1907).

Governor is part of lawmaking power and his duty with relation to bills is a legislative duty enjoined upon him by Constitution. Weis v. Ashley, 59 Neb. 494, 81 N.W. 318 (1899).

This section requires Governor to either approve or veto, and if held by Governor for more than five days, act becomes effective. State v. Abbott, 59 Neb. 106, 80 N.W. 499 (1899); State ex rel. Main v. Crounse, 36 Neb. 835, 55 N.W. 246 (1893); Miller v. Hurford, 11 Neb. 377, 9 N.W. 477 (1881).

Joint resolution providing for contest in an election proceeding must be approved by Governor. In re Contest Proceeding, 31 Neb. 262, 47 N.W. 923 (1891).

Upon receiving resolution, valid on its face, ceding jurisdiction over Indian reservations, Secretary of Interior could rely on it without having determined under state law whether Governor's signature was necessary. United States v. Brown, 334 F.Supp. 536 (D. Neb. 1971).

**IV-16. Order of succession to become Governor; Lieutenant Governor; duties.**

In case of the conviction of the Governor on impeachment, his removal from office, his resignation or his death, the Lieutenant Governor, the Speaker of the Legislature and such other persons designated by law shall in that order be Governor for the remainder of the Governor's term.

In case of the death of the Governor-elect, the Lieutenant Governor-elect, the Speaker of the Legislature and such other persons designated by law shall become Governor in that order at the commencement of the Governor-elect's term.

If the Governor or the person in line of succession to serve as Governor is absent from the state, or suffering under an inability, the powers and duties of the office of Governor shall devolve in order of precedence until the absence or inability giving rise to the devolution of powers ceases as provided by law. After January 1, 1975, the Lieutenant Governor shall serve on all boards and commissions in lieu of the Governor whenever so designated by the Governor, shall perform such duties as may be delegated him by the Governor, and shall devote his full time to the duties of his office.

**Source:**Neb. Const. art. V, sec. 16 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 16; Amended 1970, Laws 1969, c. 417, sec. 1, p. 1428; Amended 1972, Laws 1972, LB 302, sec. 1.

**Annotation**

Lieutenant Governor is not entitled to the emoluments of the Governor's office on account of mere temporary absence of the Governor from the state. Johnson v. Johnson, 141 Neb. 239, 3 N.W.2d 414 (1942).

This section does not apply to incumbent holding over on account of failure to elect successor, but refers only to persons elected and failing to qualify. State ex rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739 (1891), 51 N.W. 602 (1892).

**IV-17. Repealed 1934. Initiative Measure No. 330.**

**IV-18. Repealed 1972. Laws 1972, LB 302, sec. 1.**

**IV-19. State institutions; management, control, and government; determination by Legislature.**

The general management, control and government of all state charitable, mental, reformatory, and penal institutions shall be vested as determined by the Legislature.

**Source:**Neb. Const. art. V, sec. 19 (1875); Amended 1912, Laws 1911, c. 225, sec. 1, p. 677; Amended 1920, Constitutional Convention, 1919-1920, No. 13; Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 19; Amended 1958, Laws 1957, c. 216, sec. 1, p. 753.

**Annotation**

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. American Fed. of S., C. & M. Emp. v. Department of Public Institutions, 195 Neb. 253, 237 N.W.2d 841 (1976).

Under former law, members of the Board of Control were constituted a separate class as to salaries. State ex rel. Day v. Hall, 129 Neb. 699, 262 N.W. 850 (1935); State ex rel. Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935).

Constitutional amendment purporting to exclude schools of deaf and blind from jurisdiction of Board of Control was ineffective for failure to comply with constitutional requirements. State ex rel. Hall v. Cline, 118 Neb. 150, 224 N.W. 6 (1929).

**IV-20. Public Service Commission; membership; terms; powers.**

There shall be a Public Service Commission, consisting of not less than three nor more than seven members, as the Legislature shall prescribe, whose term of office shall be six years, and whose compensation shall be fixed by the Legislature. Commissioners shall be elected by districts of substantially equal population as the Legislature shall provide. The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law. But, in the absence of specific legislation, the commission shall exercise the powers and perform the duties enumerated in this provision.

**Source:**Neb. Const. (1906); Adopted 1906, Laws 1905, c. 233, sec. 2, p. 791; Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 20; Amended 1962, Laws 1961, c. 251, sec. 1, p. 740; Amended 1972, Laws 1972, LB 347, sec. 1.

**Annotation**

**1. Jurisdiction and powers**
**2. Regulation of rates and service**
**3. Miscellaneous**

**1. Jurisdiction and powers**

The powers enumerated in this provision apply only to common carriers. Nebraska Pub. Serv. Comm. v. Nebraska Pub. Power Dist., 256 Neb. 479, 590 N.W.2d 840 (1999).

A legislative act or statute may constitutionally divest the Public Service Commission of jurisdiction over common carriers to the extent that the Legislature, through specific legislation, has preempted the Public Service Commission in control of common carriers. State ex rel. Spire v. Northwestern Bell Tel. Co., 233 Neb. 262, 445 N.W.2d 284 (1989).

Although the Public Service Commission is an independent regulatory body under the Nebraska Constitution, Public Service Commission jurisdiction to regulate common carriers may be restricted by the Legislature through "specific legislation." State ex rel. Spire v. Northwestern Bell Tel. Co., 233 Neb. 262, 445 N.W.2d 284 (1989).

The Legislature cannot constitutionally divest the Public Service Commission of jurisdiction over a class of common carriers by vesting a governmental agency, body of government, or branch of government, except the Legislature, with control over the class of common carriers. State ex rel. Spire v. Northwestern Bell Tel. Co., 233 Neb. 262, 445 N.W.2d 284 (1989).

While the Legislature may constitutionally occupy a regulatory field, thereby specifically and preemptively excluding the Public Service Commission from some control over a class of

common carriers, the Legislature cannot absolutely and totally abandon or abolish constitutionally conferred regulatory control over common carriers. State ex rel. Spire v. Northwestern Bell Tel. Co., 233 Neb. 262, 445 N.W.2d 284 (1989).

The powers of the Public Service Commission are plenary and self-executing and past unauthorized services may be considered by the commission if not prohibited by statute. Groenewold v. Building Movers, Inc., 197 Neb. 187, 247 N.W.2d 629 (1976).

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. Myers v. Blair Tel. Co., 194 Neb. 55, 230 N.W.2d 190 (1975).

The powers of the Nebraska Public Service Commission to regulate common carriers hereunder are plenary and self-executing, but where the Legislature enacts specific legislation implementing this section, it is controlling. Dahlsten v. Harris, 191 Neb. 714, 217 N.W.2d 813 (1974).

The Nebraska Public Service Commission is without jurisdiction or authority to fix rates and charges for motor vehicle carriers transporting livestock in intrastate commerce. Livestock Carriers Div. of M.C. Assn. v. Midwest Packers Traf. Assn., 191 Neb. 1, 213 N.W.2d 443 (1973).

Because of plaintiffs' lack of standing, issue of constitutionality is not reached but, in any event, the Metropolitan Transit Authority Act does not prohibit regulation and control by Public Service Commission. Ritums v. Howell, 190 Neb. 503, 209 N.W.2d 160 (1973).

Railway Commission's plenary power to regulate common carriers hereunder extends to new and improved devices, equipment, and methods in telephone service. Radio-Fone, Inc. v. A.T.S. Mobile Telephone, Inc., 187 Neb. 637, 193 N.W.2d 442 (1972).

Railway Commission's powers of enforcement are not limited to injunction authorized by statute in absence of specific legislation to that effect. Nebraska State Railway Commission v. Chicago & N.W. Ry. Co., 187 Neb. 369, 191 N.W.2d 438 (1971).

The fact that the State Railway Commission has certain legislative and judicial powers does not prevent it from being in a broad sense an administrative agency. Yellow Cab Co. v. Nebraska State Railway Commission, 175 Neb. 150, 120 N.W.2d 922 (1963).

Telephone companies are subject to regulation by the State Railway Commission. Block v. Lincoln Tel. & Tel. Co., 170 Neb. 531, 103 N.W.2d 312 (1960).

State Railway Commission has authority to reconsider an order denying a certificate of public convenience and necessity. Miller v. Consolidated Motor Freight, Inc., 168 Neb. 712, 97 N.W.2d 265 (1959).

Pipe line carriers are subject to regulation by State Railway Commission but are not required to obtain certificate of public convenience and necessity under Motor Carrier Act. Toronto Pipe Line Co. v. Camerland Pipelines Co., Inc., 167 Neb. 201, 92 N.W.2d 554 (1958).

Specific legislation controls over general powers of commission. Edgar v. Wheeler Transport Service, Inc., 157 Neb. 1, 58 N.W.2d 496 (1953).

Motor Carrier Act was specific legislation limiting plenary power of commission. In re Application of Richling, 154 Neb. 108, 47 N.W.2d 413 (1951).

Transfer of jurisdiction over common carriers by air from State Railway Commission to Department of Aeronautics was unconstitutional. State ex rel. State Railway Commission v. Ramsey, 151 Neb. 333, 37 N.W.2d 502 (1949).

Legislature may properly enact specific legislation limiting the scope of the commission's powers. Union Transfer Co. v. Bee Line Motor Freight, 150 Neb. 280, 34 N.W.2d 363 (1948).

State Railway Commission has original jurisdiction to grant or deny certificate of convenience and necessity to common carrier. In re Application of Effenberger, 150 Neb. 13, 33 N.W.2d 296 (1948).

Legislative act may deprive the Nebraska State Railway Commission of any power to act to extent that it occupies the field. State v. Chicago & N.W. Ry. Co., 147 Neb. 970, 25 N.W.2d 824 (1947).

The State Railway Commission is a constitutionally created body, as distinguished from an executive department or commission created by the Legislature. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

Nebraska State Railway Commission is a constitutionally created body endowed with powers and duties. In re Application of Hergott, 145 Neb. 100, 15 N.W.2d 418 (1944).

State Railway Commission has power to determine properly presented issues on application of railroad company to discontinue passenger trains on branch line, and, on appeal to Supreme Court, the question for determination is the sufficiency of the evidence to prove that the order is not unreasonable or arbitrary. In re Application of Chicago, B. & Q. R. R. Co., 138 Neb. 767, 295 N.W. 389 (1940).

Railway Commission has sole power to grant, deny, amend, transfer or revoke certificate of convenience and necessity for the operation of a bus line. Marconnit v. Effenberger, 135 Neb. 564, 283 N.W. 226 (1939); Effenberger v. Marconnit, 135 Neb. 558, 283 N.W. 223 (1939).

Legislature may delegate power to Railway Commission to regulate contract carriers where public may not continue to have safe and dependable transportation system unless contract carriers are brought under just and reasonable regulations bringing their service into relation with common carriers. Rodgers v. Nebraska State Railway Commission, 134 Neb. 832, 279 N.W. 800 (1938).

State Railway Commission is without power to prevent railroad company from leasing portions of its private right-of-way to certain persons for private lumber yards and deny same privilege to others where demised premises are not railroad transportation facilities devoted or necessary to public use. Johnson v. Union Pac. R. R. Co., 133 Neb. 243, 274 N.W. 581 (1937).

State Railway Commission has power to make award of damages against railroad company for exacting over charge from shipper. Central Bridge & Construction Co. v. Chicago & N. W. Ry. Co., 129 Neb. 726, 262 N.W. 852 (1935).

In reviewing orders of Railway Commission which require exercise of legislative authority, the courts can only determine the limitation of power and reasonableness of the regulation. Central Bridge & Construction Co. v. Chicago & N. W. Ry. Co., 128 Neb. 779, 260 N.W. 172 (1935).

Taxicab companies are common carriers and under jurisdiction of Railway Commission in absence of specific legislation. In re Yellow Cab & Baggage Co., 126 Neb. 138, 253 N.W. 80 (1934).

Railway Commission has jurisdiction over street railways in cities. Omaha & C. B. St. Ry. Co. v. City of Omaha, 125 Neb. 825, 252 N.W. 407 (1934).

Resolution of commission requiring motor carrier to deposit liability insurance or other security is not in excess of powers. Petersen v. Beal, 121 Neb. 348, 237 N.W. 146 (1931).

Power to regulate and control telephone companies is subject to general constitutional limitations, but includes power to order connection of systems. Blackledge v. Farmers' Ind. Tel. Co. of Red Cloud, 105 Neb. 713, 181 N.W. 709 (1921).

Railway Commission has jurisdiction over irrigation companies and may inquire into, regulate and fix water rates. McCook Irrigation & Water Power Co. v. Burtless, 98 Neb. 141, 152 N.W. 334 (1915).

When parties fail to agree, Railway Commission may prescribe terms and conditions of connection, use of lines, and apportionment of expense. Hooper Tel. Co. v. Nebraska Tel. Co., 96 Neb. 245, 147 N.W. 674 (1914).

Power to regulate includes street railway companies. Herpolsheimer Co. v. Lincoln Traction Co., 96 Neb. 154, 147 N.W. 206 (1914), 147 N.W. 1114 (1914), rehearing denied, 97 Neb. 113, 149 N.W. 326 (1914).

Power extends over all railroads and within municipalities. Chicago, R. I. & P. Ry. Co. v. Nebraska State Railway Commission, 89 Neb. 853, 132 N.W. 409 (1911).

**2. Regulation of rates and service**

The Nebraska Public Service Commission is without jurisdiction or authority to fix rates and charges for motor vehicle carriers transporting livestock in intrastate commerce. Livestock Carriers Div. of M.C. Assn. v. Midwest Packers Traf. Assn., 191 Neb. 1, 213 N.W.2d 443 (1973).

There being no specific legislation to the contrary, this provision is sufficiently broad to authorize the State Railway Commission to fix joint line rates. Howard McLean Co. v. Chicago, B. & Q. R.R. Co., 187 Neb. 30, 187 N.W.2d 300 (1971).

State Railway Commission is clothed with power to hold hearings and establish rates for common carriers in intrastate commerce. Erickson v. Metropolitan Utilities Dist., 171 Neb. 654,

107 N.W.2d 324 (1961).

State Railway Commission has power to regulate rates of telephone companies. City of Scottsbluff v. United Telephone Co. of the West, 171 Neb. 229, 106 N.W.2d 12 (1960).

State Railway Commission has jurisdiction over regulation of rates and service of motor carriers. Strasheim v. Martin, 169 Neb. 787, 101 N.W.2d 161 (1960).

Powers of State Railway Commission do not include regulation of rates of private carriers. City of Bayard v. North Central Gas Co., 164 Neb. 819, 83 N.W.2d 861 (1957).

State Railway Commission had power to consider and determine the issues with respect to discontinuance of motor passenger train service on branch line of railroad. In re Application of Chicago, Burlington & Quincy R. R. Co., 152 Neb. 367, 41 N.W.2d 165 (1950); In re Application of Chicago, Burlington & Quincy R. R. Co., 152 Neb. 352, 41 N.W.2d 157 (1950).

State Railway Commission has power to make rules and regulations for administration of Motor Carrier Act. In re Application of Neylon, 151 Neb. 587, 38 N.W.2d 552 (1949).

Legislature has right to prescribe how commission shall proceed and what authority it may exercise in regulating common carriers. Chicago & N. W. Ry. Co. v. County Board of Dodge County, 148 Neb. 648, 28 N.W.2d 396 (1947).

The grant or refusal of a certificate of convenience and necessity to a motor carrier is within the constitutional authority of the State Railway Commission. Moritz v. State Railway Commission, 147 Neb. 400, 23 N.W.2d 545 (1946).

State Railway Commission may make different intrastate freight rates from the initial shipping point to different places in the same switching district at the station to which shipments are consigned, where difference in conditions so warrants. Shields Co. v. Chicago, B. & Q. R. R. Co., 133 Neb. 722, 276 N.W. 925 (1938).

State Railway Commission has plenary jurisdiction over the rates, service and regulation of common carriers. Furstenberg v. Omaha & C. B. St. Ry. Co., 132 Neb. 562, 272 N.W. 756 (1937).

Telephone companies are subject to Railway Commission's reasonable orders on due hearings as to rates and time and manner of service. Farmers & Merchants Tel. Co. of Alma v. Orleans Community Club, 116 Neb. 633, 218 N.W. 583 (1928).

Railway Commission, in absence of specific legislation limiting power, has under this section all power in regulation of rates and service, and general control, that the people themselves could exercise. Omaha & C. B. St. Ry. Co. v. Nebraska State Ry. Com., 103 Neb. 695, 173 N.W. 690 (1919); In re Lincoln Traction Co., 103 Neb. 229, 171 N.W. 192 (1919).

When question is whether community or locality is properly served, not only question of rates are involved, but other questions and conditions peculiarly within province of Railway Commission. Rivett Lumber & Coal Co. of Benson v. Chicago & N. W. Ry. Co., 102 Neb. 492, 167 N.W. 570 (1918).

Railway Commission has power to regulate rates and service within municipalities, and municipality is not empowered to contract with telephone company so as to deprive commission of right to regulate. Marquis v. Polk County Tel. Co., 100 Neb. 140, 158 N.W. 927 (1916).

Railway Commission can fix rates only in absence of specific legislation. State ex rel. Missouri P. R. Co. v. Clarke, 98 Neb. 566, 153 N.W. 623 (1915).

State Railway Commission had jurisdiction to regulate intrastate business use and charges therefor of team tracks on railroad's belt line in city of Omaha. Missouri Pac. R. R. Corp. v. Nebraska State Ry. Commission, 65 F.2d 557 (8th Cir. 1933).

Rates are within rule-making power of State Railway Commission. Mogis v. Lyman-Richey Sand & Gravel Corp., 90 F.Supp. 251 (D. Neb. 1950).

**3. Miscellaneous**

Railway commissioner was eligible for office of State Treasurer. Swanson v. Sorensen, 181 Neb. 312, 148 N.W.2d 197 (1967).

Where the Legislature enacts specific legislation implementing this section, such legislation is controlling. Sherdon v. American Communication Co., 178 Neb. 454, 134 N.W.2d 42 (1965).

Public power districts are not common carriers. Consumers P. P. Dist. v. Twin Valleys P. P. Dist., 172 Neb. 315, 109 N.W.2d 372 (1961).

State Railway Commission is subject to and governed by specific legislation. Neuswanger v. Houk, 170 Neb. 670, 104 N.W.2d 235 (1960).

Legislature has, by specific legislation, regulated common carriers by motor vehicle. R. B. "Dick" Wilson, Inc. v. Hargleroad, 165 Neb. 468, 86 N.W.2d 177 (1957).

While this section does not contain provisions pertaining to eligibility, the Legislature may make reasonable restrictions upon eligibility to hold office of member of State Railway Commission. State ex rel. Quinn v. Marsh, 141 Neb. 436, 3 N.W.2d 892 (1942).

One not admitted to the bar is not authorized to engage in the practice of the law before the Nebraska State Railway Commission. State ex rel. Johnson v. Childe, 139 Neb. 91, 295 N.W. 381 (1941).

Members of Railway Commission are constituted a separate class in fixing salary. State ex rel. Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935).

A State Railway Commissioner is not required to give an official bond. State ex rel. Shields v. Hall, 103 Neb. 17, 170 N.W. 173 (1918).

**IV-21. Repealed 1972. Laws 1972, LB 302, sec. 1.**

**IV-22. Executive officials to keep accounts; reports; false reports, penalty.**

The Legislature shall provide by statute for the keeping of accounts and the reporting by those agencies of the state which are required to administer cash funds not subject to appropriation by the Legislature, and an annual report thereof shall be made to the Governor under oath; and any officer who makes a false report shall be guilty of perjury and punished accordingly.

**Source:**Neb. Const. art. V, sec. 21 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 22; Amended 1964, Laws 1963, c. 302, sec. 2(2), p. 895.

**Annotation**

This section applies to all officers of public institutions. Moore v. State, 53 Neb. 831, 74 N.W. 319 (1898).

**IV-23. Executive officials and heads of institutions; reports to Legislature; information from expending agencies.**

All expending agencies of the state as the Legislature may provide shall at least ten days preceding each regular session of the Legislature severally report to the Governor, who shall transmit such reports to the Legislature, together with the reports of the Judges of the Supreme Court of defects in the constitution and laws, and the Governor or the Legislature may at any time require information, in writing, under oath, from the officers of all expending agencies, upon any subject relating to the condition, management and expenses of their respective offices.

**Source:**Neb. Const. art. V, sec. 22 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 23; Amended 1964, Laws 1963, c. 302, sec. 2(2), p. 895.

**Annotation**

Amendment to Habitual Criminal Act was enacted as result of report of Judges to Legislature of defects in the Constitution and laws. Haffke v. State, 149 Neb. 83, 30 N.W.2d 462 (1948).

**IV-24. Great seal.**

There shall be a seal of the state, which shall be called the "Great Seal of the State of Nebraska," which shall be kept by the Secretary of State and used by him officially as directed by law.

**Source:**Neb. Const. art. V, sec. 23 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 24.

**IV-25. Salaries of officials; fees.**

The officers provided for in this article shall receive such salaries as may be provided by law. Such officers, or such other officers as may be provided for by law, shall not receive for their own use any fees, costs, or interest upon public money in their hands. All fees that may hereafter be payable by law for services performed, or received by an officer provided for in this article, by virtue of his office shall be paid forthwith into the state treasury.

**Source:**Neb. Const. art. V, sec. 24 (1875); Amended 1920, Constitutional Convention, 1919-1920, No.

13; Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 25; Amended 1956, Laws 1955, c. 193, sec. 1, p. 555.

**Annotation**

Under former law, salary of executive officer could not be changed more than once in eight years. State ex rel. Laughlin v. Johnson, 156 Neb. 671, 57 N.W.2d 531 (1953).

County officer is required to perform the duties of his office for the compensation allowed him by statute. Hoctor v. State, 141 Neb. 329, 3 N.W.2d 558 (1942).

During temporary absence of Governor from state, Lieutenant Governor is entitled only to salary fixed by law for the office of Lieutenant Governor and not for office of Governor. Johnson v. Johnson, 141 Neb. 239, 3 N.W.2d 414 (1942).

Salary of State Railway Commissioner is subject to garnishment under statute in force at time he was candidate and elected to office. Department of Banking v. Foe, 136 Neb. 422, 286 N.W. 264 (1939).

Nebraska State Board of Agriculture was not a public agency so as to require funds to be paid into state treasury. Crete Mills v. Nebraska State Board of Agriculture, 132 Neb. 244, 271 N.W. 684 (1937).

Act providing for refunding of excess grain inspection fees is not in conflict herewith. Bollen v. Price, 129 Neb. 342, 261 N.W. 689 (1935).

Occupancy by Governor of mansion provided by state is not a perquisite of office or other compensation. State v. Sheldon, 78 Neb. 552, 111 N.W. 372 (1907).

Constitution modified all previous statutes so as to require all fees to be paid in advance into the treasury. State v. Home Insurance Co., 59 Neb. 524, 81 N.W. 443 (1900); State v. Moore, 56 Neb. 82, 76 N.W. 474 (1898); Moore v. State, 53 Neb. 831, 74 N.W. 319 (1898).

**IV-26. Officials to give bonds.**

All officers of government shall give bond as may be prescribed by law.

**Source:**Neb. Const. art. V, sec. 25 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 26; Amended 1964, Laws 1963, c. 302, sec. 2(2), p. 895.

**Annotation**

Bond required of public officers by Constitution may be defined as a contractual obligation that such officer will faithfully discharge the duties of his office. Laverty v. Cochran, 132 Neb. 118, 271 N.W. 354 (1936).

**IV-27. Executive offices; creation of.**

No executive state office other than herein provided shall be created except by a two-thirds majority of

all members elected to the Legislature.

**Source:**Neb. Const. art. V, sec. 26 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 13; Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 27; Amended 1972, Laws 1971, LB 341, sec. 1.

**Annotation**

Merit System Act did not create an executive state office. Sommerville v. Johnson, 149 Neb. 167, 30 N.W.2d 577 (1948).

Member of Nebraska Liquor Control Commission is not the head of an executive department. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

Subject to the limitations of this section, the Legislature has power to create new executive state departments and executive state officers as heads thereof. State ex rel. Howard v. Marsh, 146 Neb. 750, 21 N.W.2d 503 (1946).

Department of Industrial Development was an executive office which required two-thirds vote to create. Mekota v. State Board of Equalization & Assessment, 146 Neb. 370, 19 N.W.2d 633 (1945).

Power to create or continue an office is vested in the legislative department of government, subject to constitutional restrictions. Swanson v. State, 132 Neb. 82, 271 N.W. 264 (1937).

**IV-28. Tax Equalization and Review Commission; members; powers; Tax Commissioner; powers.**

By January 1, 1997, there shall be a Tax Equalization and Review Commission. The members of the commission shall be appointed by the Governor as provided by law. The commission shall have power to review and equalize assessments of property for taxation within the state and shall have such other powers and perform such other duties as the Legislature may provide. The terms of office and compensation of members of the commission shall be as provided by law.

A Tax Commissioner shall be appointed by the Governor with the approval of the Legislature. The Tax Commissioner may have jurisdiction over the administration of the revenue laws of the state and such other duties and powers as provided by law. The Tax Commissioner shall serve at the pleasure of the Governor.

**Source:**Neb. Const. art. V, sec. 27 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 14; Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 28; Amended 1996, Laws 1995, LR 3CA, sec. 1.

**Annotation**

Power to hold examinations of applicants for certification as county assessors and determine qualifications is granted by this section, dependent only on implementing legislative action. Shear v. County Board of Commissioners, 187 Neb. 849, 195 N.W.2d 151 (1972).

Authority and power of State Board of Equalization and Assessment noted. In re Valuation and Equalization, 182 Neb. 621, 156 N.W.2d 728 (1968).

Section is self-executing, and together with statute, constitutes Tax Commissioner an administrative agency to enforce revenue laws. State v. Odd Fellows Hall Assn., 123 Neb. 440, 243 N.W. 616 (1932).

Where Auditor of Public Accounts certified appropriation as reduced by unauthorized veto, review of action of State Board of Equalization and Assessment was not confined to writ of error. Elmen v. State Board of Equalization and Assessment, 120 Neb. 141, 231 N.W. 772 (1930).

State Supreme Court on appeal from decision of State Board of Equalization in proceedings involving valuation and assessment of railroad property for taxation acts in judicial, and not in administrative capacity. Chicago & N. W. Ry. Co. v. Bauman, 69 F.2d 171 (8th Cir. 1934).

**V-1. Power vested in courts; Chief Justice; powers.**

The judicial power of the state shall be vested in a Supreme Court, an appellate court, district courts, county courts, in and for each county, with one or more judges for each county or with one judge for two or more counties, as the Legislature shall provide, and such other courts inferior to the Supreme Court as may be created by law. In accordance with rules established by the Supreme Court and not in conflict with other provisions of this Constitution and laws governing such matters, general administrative authority over all courts in this state shall be vested in the Supreme Court and shall be exercised by the Chief Justice. The Chief Justice shall be the executive head of the courts and may appoint an administrative director thereof.

**Source:**Neb. Const. art. VI, sec. 1 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 1; Amended 1970, Laws 1969, c. 419, sec. 1, p. 1432; Amended 1990, Laws 1990, LR 8, sec. 1.

**Annotation**

**1. Establishment of courts**
**2. Functions of judicial department**
**3. Judicial powers of administrative boards**
**4. Miscellaneous**

**1. Establishment of courts**

Act establishing Court of Industrial Relations does not violate any constitutional provision and the standards for its guidance are adequate. Orleans Education Assn. v. School Dist. of Orleans, 193 Neb. 675, 229 N.W.2d 172 (1975).

The Legislature has power to create courts inferior to the Supreme Court. Anderson v. Tiemann, 182 Neb. 393, 155 N.W.2d 322 (1967).

Legislature has power to abolish justice of the peace courts only as an incident to the exercise of the power to substitute other courts for the justice of the peace courts. State ex rel Woolsey v. Morgan, 138 Neb. 635, 294 N.W. 436 (1940).

Justice courts are courts created by the Constitution, and only persons licensed to practice law are entitled to practice in such courts. State ex rel. Hunter v. Kirk, 133 Neb. 625, 276 N.W. 380 (1937).

Workmen's Compensation Court was created pursuant to this section. City of Lincoln v. Nebraska Workmen's Compensation Court, 133 Neb. 225, 274 N.W. 576 (1937).

Legislature may substitute municipal court for justice of peace court within such districts. State ex rel. Wright v. Brown, 131 Neb. 239, 267 N.W. 466 (1936).

Legislature may provide for justice of the peace districts, etc., and may substitute other courts for justice courts within such districts. State ex rel. Bunce v. Kubat, 110 Neb. 362, 193 N.W. 754 (1923).

County judge is constitutional officer, and can be removed only by impeachment. Conroy v. Hallowell, 94 Neb. 794, 144 N.W. 895 (1913).

Police magistrate is a constitutional office, and the term thereof is fixed by Constitution. State ex rel. McDermott v. Reilly, 94 Neb. 232, 142 N.W. 923 (1913), rehearing denied 94 Neb. 238, 143 N.W. 200 (1913).

Police judge is judicial constitutional officer and must be elected as such. State ex rel. Benson v. Mayor & Council of City of Hastings, 91 Neb. 304, 135 N.W. 1028 (1912); State ex rel. Gordon v. Moores, 61 Neb. 9, 84 N.W. 399 (1900); State ex rel. Wheeler v. Stuht, 52 Neb. 209, 71 N.W. 941 (1897).

County courts are by this section made courts of record. Noakes v. Switzer, 12 Neb. 156, 10 N.W. 536 (1881).

Justice of the peace is a state office and the person filling that office is an officer of the state included in the term public officers under agreement with the Federal Security Administrator requiring social security contributions from state based on compensation paid to officers of the state. State v. Finch, 339 F.Supp. 528 (D. Neb. 1972).

County courts are by this section made a part of the judicial power of the state, being courts of record, with certain constitutional original jurisdiction as well as that given them by statute. City of Hattiesburg v. First National Bank of Hattiesburg, 8 F.Supp. 157 (S. D. Miss. 1934).

**2. Functions of judicial department**

The Nebraska Supreme Court is vested with the sole power to admit persons to the practice of law in this state and to fix qualifications for admission to the Nebraska bar. In re Application of Brown, 270 Neb. 891, 708 N.W.2d 251 (2006).

A court cannot, in enforcing directives of a superior court, deprive a party of legal or substantive rights by acting in an arbitrary or unreasonable manner which is inconsistent with or contravenes principles of general law or constitutional or statutory provisions. In re Estate of Reed, 267 Neb. 121, 672 N.W.2d 416 (2003).

The Supreme Court has administrative authority over all inferior courts. It is essential for the Supreme Court, as a part of its inherent authority, to provide inferior courts with case progression standards in order to ensure that cases are properly disposed of in a timely and efficient manner. In re Estate of Reed, 267 Neb. 121, 672 N.W.2d 416 (2003).

The Nebraska Supreme Court, and only that court, is invested with the power to admit persons to the practice of law and to fix qualifications for admission to the bar. Thus, it has the responsibility to adopt and implement systems designed to protect the public and safeguard the judicial system by assuring that those admitted to the bar are of such character and fitness as to be worthy of the trust and confidence such admission implies. In re Application of Majorek, 244 Neb. 595, 508 N.W.2d 275 (1993).

County courts can only acquire jurisdiction through legislative enactment. Miller v. Janecek, 210 Neb. 316, 314 N.W.2d 250 (1982).

This provision clearly grants county courts jurisdiction over actions involving speeding violations. State v. Jones, 209 Neb. 296, 307 N.W.2d 126 (1981).

Establishment of judicial department conferred authority necessary to exercise its powers as coordinate department of government. State ex rel. Ralston v. Turner, 141 Neb. 556, 4 N.W.2d 302 (1942).

Supreme Court is vested with sole power to admit persons to practice of law and fix their qualifications. State ex rel. Wright v. Hinckle, 137 Neb. 735, 291 N.W. 68 (1940).

It is an imperative duty of the judicial department of government to protect its jurisdiction at the boundaries of power fixed by the Constitution. State ex rel. Wright v. Barney, 133 Neb. 676, 276 N.W. 676 (1937).

Right to define and regulate the practice of law belongs to the Judicial Department of State Government. In re Integration of the Nebraska State Bar Association, 133 Neb. 283, 275 N.W. 265 (1937).

This section places judicial power in the courts. Laverty v. Cochran, 132 Neb. 118, 271 N.W. 354 (1936).

Supreme Court is vested with sole power to admit persons to practice of law in this state and to fix qualifications for admission to the bar. State ex rel. Wright v. Barlow, 131 Neb. 294, 268 N.W. 95 (1936).

Power conferred by special statute on Supreme Court Justice to require election commissioner to file nomination acceptance and place name on ballot is judicial, not quasi-political or administrative. State ex rel. Meissner v. McHugh, 120 Neb. 356, 233 N.W. 1 (1930).

Unless Constitution provides otherwise, Legislature may classify and regulate judicial powers and functions. State ex rel. Smyth v. Magney, 52 Neb. 508, 72 N.W. 1006 (1897).

Judicial power is the authority of some persons or tribunals to hear and determine a controversy and render judgment or decree binding parties thereto. Acknowledgment of deed is not judicial function. Horbach v. Tyrrell, 48 Neb. 514, 67 N.W. 485 (1896).

**3. Judicial powers of administrative boards**

Provision in Nebraska Clean Waters Commission Act regarding appointment of trustees

construed so as not to violate this section. State ex rel. Meyer v. Duxbury, 183 Neb. 302, 160 N.W.2d 88 (1968).

Party who invoked special proceeding could not question constitutionality thereof under this section. Lackaff v. Department of Roads & Irrigation, 153 Neb. 217, 43 N.W.2d 576 (1950).

Reclamation Act did not violate this section. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

Statute providing for board of appraisers designated as "court of condemnation," does not create "court" in contravention of Constitution although board's functions are judicial in nature. City of Mitchell v. Western Public Service Co., 124 Neb. 248, 246 N.W. 484 (1933).

Statute empowering administrative department to cancel water appropriation after hearing, where water was not put to beneficial use, was not void as giving department judicial powers. Dawson County Irr. Co. v. McMullen, 120 Neb. 245, 231 N.W. 840 (1930).

Law authorizing appointment of three district judges to act as appraisers in condemnation of gas plant by municipality does not create new court. In re Appraisement of Omaha Gas Plant, 102 Neb. 782, 169 N.W. 725 (1918).

Conferring upon boards or individuals of executive or administrative functions requiring exercise of judicial powers does not thereby confer judicial functions. Enterprise Irrigation Dist. v. Tri-State Land Co., 92 Neb. 121, 138 N.W. 171 (1912).

Giving discretionary and regulatory powers to administrative board does not make it a judicial body. State ex rel. Prout v. Northwestern Trust Co., 72 Neb. 497, 101 N.W. 14 (1904).

Administrative board was not clothed with judicial functions because it incidentally determines water rights of riparian owners. Crawford Co. v. Hathaway, 60 Neb. 754, 84 N.W. 271 (1900).

Granting to county board of duty of passing on claims against county, with right of appeal to district court, does not confer judicial power. Stenberg v. State ex rel. Keller, 48 Neb. 299, 67 N.W. 190 (1896).

Conferring power on county board to oust county officer for corruption does not of itself confer judicial powers on such board. State ex rel. Walters v. Oleson, 15 Neb. 247, 18 N.W. 45 (1893).

**4. Miscellaneous**

Article V, section 30(3), of the Nebraska Constitution does not limit suspension with pay to the two instances listed; suspension may be imposed in other instances pursuant to this provision. In re Complaint Against Jones, 255 Neb. 1, 581 N.W.2d 876 (1998).

Where district judges are appointed to appraise property in condemnation proceedings, the body thus created is not a court but a special tribunal. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448 (1945).

Creation of municipal courts is provided for in Constitution, and vacancies in office of judge of municipal court must be filled in accordance with constitutional provisions. State ex rel. Hunter

v. Maguire, 136 Neb. 365, 285 N.W. 921 (1939).

An affirmative statute giving a remedy not known to the common law does not take away the common law remedy. State ex rel. Wright v. Barney, 133 Neb. 676, 276 N.W. 676 (1937).

Freedom of press does not extend to contemptuous interferences with pending litigation. State v. Lovell, 117 Neb. 710, 222 N.W. 625 (1929).

Notary public cannot impose fine or imprisonment in punishment for contempt in taking of depositions. Courtnay v. Knox, 31 Neb. 652, 48 N.W. 763 (1891).

District judge is not officer of county, but of state. Jones v. York County, 26 F.2d 623 (8th Cir. 1928).

**V-2. Supreme Court; number of judges; quorum; jurisdiction; retired judges, temporary duty; court divisions; assignments by Chief Justice.**

The Supreme Court shall consist of seven judges, one of whom shall be the Chief Justice. A majority of the judges shall be necessary to constitute a quorum. A majority of the members sitting shall have authority to pronounce a decision except in cases involving the constitutionality of an act of the Legislature. No legislative act shall be held unconstitutional except by the concurrence of five judges. The Supreme Court shall have jurisdiction in all cases relating to the revenue, civil cases in which the state is a party, mandamus, quo warranto, habeas corpus, election contests involving state officers other than members of the Legislature, and such appellate jurisdiction as may be provided by law. The Legislature may provide that any judge of the Supreme Court or judge of the appellate court created pursuant to Article V, section 1, of this Constitution who has retired may be called upon for temporary duty by the Supreme Court. Whenever necessary for the prompt submission and determination of causes, the Supreme Court may appoint judges of the district court or the appellate court to act as associate judges of the Supreme Court, sufficient in number, with the judges of the Supreme Court, to constitute two divisions of the court of five judges in each division. Whenever judges of the district court or the appellate court are so acting, the court shall sit in two divisions, and four of the judges thereof shall be necessary to constitute a quorum. Judges of the district court or the appellate court so appointed shall serve during the pleasure of the court and shall have all the powers of judges of the Supreme Court. The Chief Justice shall make assignments of judges to the divisions of the court, preside over the division of which he or she is a member, and designate the presiding judge of the other division. The judges of the Supreme Court, sitting without division, shall hear and determine all cases involving the constitutionality of a statute and all appeals involving capital cases and may review any decision rendered by a division of the court. In such cases, in the event of the disability or disqualification by interest or otherwise of any of the judges of the Supreme Court, the court may appoint judges of the district court or the appellate court to sit temporarily as judges of the Supreme Court, sufficient to constitute a full court of seven judges. Judges of the district court or the appellate court shall receive no additional salary by virtue of their appointment and service as herein provided, but they shall be reimbursed their necessary traveling and hotel expenses.

**Source:**Neb. Const. art. VI, sec. 2 (1875); Amended 1908, Laws 1907, c. 202, sec. 1, p. 581; Amended 1920, Constitutional Convention, 1919-1920, Nos. 15 and 16; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 2; Amended 1968, Laws 1967, c. 316, sec. 1, p. 846; Amended 1970, Laws 1969, c. 420, sec. 1, p. 1434; Amended 1990, Laws 1990, LR 8, sec. 1.

**Annotation**

**1. Original jurisdiction**
**2. Appellate jurisdiction**
**3. Miscellaneous**

**1. Original jurisdiction**

The Supreme Court has original jurisdiction to consider habeas corpus proceedings, but does not ordinarily entertain original actions, unless some good reason is shown why the application was not made to a county or district court. Smeal Fire Apparatus Co. v. Kreikemeier, 271 Neb. 616, 715 N.W.2d 134 (2006).

The Nebraska Constitution places original sentencing authority in the district courts and does not provide sentencing as one of the Supreme Court's powers. State v. Reeves, 258 Neb. 511, 604 N.W.2d 151 (2000).

Jurisdiction in this case accepted by the Supreme Court because the state is a party and has an interest relating to the revenue. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975).

Declaratory judgment action to determine question of constitutionality of state statute was properly brought in Supreme Court. State Securities Co. v. Ley, 177 Neb. 251, 128 N.W.2d 766 (1964).

Supreme Court has original jurisdiction of declaratory judgment action relating to the revenue of the state. Anderson v. Herrington, 169 Neb. 391, 99 N.W.2d 621 (1959).

Original jurisdiction existed over action relating to validity of Judges Retirement Act. Wilson v. Marsh, 162 Neb. 237, 75 N.W.2d 723 (1956).

Supreme Court has original jurisdiction in quo warranto to try title to office of member of Board of Control. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

Unless unusual circumstances are present or the matter is of statewide importance, Supreme Court will not issue writ of habeas corpus in the exercise of its original jurisdiction. Williams v. Olson, 143 Neb. 115, 8 N.W.2d 830 (1943).

Original jurisdiction in quo warranto is vested in Supreme Court. State ex rel. Johnson v. Consumers Public Power Dist., 142 Neb. 114, 5 N.W.2d 202 (1942).

Original jurisdiction of Supreme Court is limited to cases specified in this section. State ex rel. Wright v. Barney, 133 Neb. 676, 276 N.W. 676 (1937).

State of Nebraska and executive departments thereof may seek relief in original action under Uniform Declaratory Judgments Act. State ex rel. Smrha v. General American Life Ins. Co., 132 Neb. 520, 272 N.W. 555 (1937).

Supreme Court may decline to take original jurisdiction to oust executive state officer where information fails to state cause of action in quo warranto. State ex rel. Good v. Conklin, 127

Neb. 417, 255 N.W. 925 (1934).

On appeal from confirmation of judicial sale to foreclose mortgage on real estate, an application for moratorium is not within original jurisdiction of Supreme Court. Wallace v. Clements, 125 Neb. 358, 250 N.W. 235 (1933).

Repeated violations of criminal statute, harmfully affecting rights of people generally, is "public wrong" enjoinable by Supreme Court in original suit by state as plaintiff. State ex rel. Sorensen v. Ak-Sar-Ben Exposition Co., 118 Neb. 851, 226 N.W. 705 (1929).

Original jurisdiction includes injunction to enforce intoxicating liquor law. State v. Chicago, B. & Q. R. R. Co., 88 Neb. 669, 130 N.W. 295 (1911).

Original jurisdiction in cases in which the state is a party is not confined to those of mere pecuniary interest, but includes cases in which the state seeks to enforce public rights or restrain a public wrong. State v. Pacific Express Co., 80 Neb. 823, 115 N.W. 619 (1908).

Designation of original jurisdiction in Supreme Court is prohibition in all other cases. Parties cannot by consent confer jurisdiction on Supreme Court. Edney v. Baum, 70 Neb. 159, 97 N.W. 252 (1903).

Supreme Court has no original jurisdiction in cases criminal in nature. Applied to action for collection of penalty. State v. Missouri Pac. Ry. Co., 64 Neb. 679, 90 N.W. 877 (1902).

Where method of procedure in original jurisdiction of Supreme Court is not pointed out either by Constitution or statutes, court will adopt its own rules of procedure. State ex rel. Broatch v. Moores, 56 Neb. 1, 76 N.W. 530 (1898).

Mandamus cannot be invoked to take place of injunction as preventive remedy only. State ex rel. Dahlman v. Piper, 50 Neb. 25, 69 N.W. 378 (1896).

Legislature cannot confer original jurisdiction of subjects not enumerated in Constitution. Applied to writ of prohibition. State ex rel. King v. Hall, 47 Neb. 579, 66 N.W. 642 (1896).

Original jurisdiction does not include actions for relief for fraud unless state is party. Coombs v. MacDonald, 43 Neb. 632, 62 N.W. 41 (1895).

Unless expressly restricted, original jurisdiction of Supreme Court is concurrent with district courts. In re Petition of Attorney General, 40 Neb. 402, 58 N.W. 945 (1894).

Supreme Court has original jurisdiction to appoint receiver of defunct bank under banking law. State v. Exchange Bank of Milligan, 34 Neb. 198, 51 N.W. 765 (1892); State v. Commercial State Bank, 28 Neb. 677, 44 N.W. 998 (1890).

Supreme Court has original jurisdiction of quo warranto to determine rights to public office. State ex rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739 (1891), 51 N.W. 602 (1892).

Supreme Court has original jurisdiction in quo warranto for determining conflicting claims to public office, but cannot act in contested election claims. State ex rel. Fair v. Frazier, 28 Neb.

438, 44 N.W. 471 (1890).

Original jurisdiction of Supreme Court is limited to those cases designated by this section. Bell v. Templin, 26 Neb. 249, 41 N.W. 1093 (1889).

**2. Appellate jurisdiction**

The Nebraska Supreme Court, except in those cases wherein original jurisdiction is specially conferred, exercises appellate jurisdiction, and such appellate jurisdiction can be conferred only in the manner provided by statute. State v. Reeves, 258 Neb. 511, 604 N.W.2d 151 (2000).

Unless the context is shown to intend otherwise, action includes any proceeding in a court and only final orders therein are bases for appeals. Grantham v. General Telephone Co., 187 Neb. 647, 193 N.W.2d 449 (1972).

Appellate jurisdiction of the Supreme Court is limited to review of judgments and final orders. Rhodes v. Houston, 172 Neb. 177, 108 N.W.2d 807 (1961).

Supreme Court has jurisdiction on appeal to grant temporary injunction and appoint receiver. State ex rel. Beck v. Associates Discount Corp., 162 Neb. 683, 77 N.W.2d 215 (1956).

Except in those cases in which original jurisdiction is conferred hereby, Supreme Court exercises appellate jurisdiction only, which can be conferred only in the manner provided by statute. Larson v. Wegner, 120 Neb. 449, 233 N.W. 253 (1930).

Where cause is determined on appeal by concurrence of five judges as provided by this section, motion for rehearing will be denied, where appellant failed to file written request for hearing to full bench. Day v. Metropolitan Utilities Dist., 115 Neb. 711, 216 N.W. 556 (1927).

Act conferring jurisdiction upon Supreme Court to review decisions of the State Railway Commission confers appellate jurisdiction. Hooper Telephone Co. v. Nebraska Telephone Co., 96 Neb. 245, 147 N.W. 674 (1914).

Supreme Court has no original jurisdiction to compel accounting by corporation manager. State v. Tabitha Home, 78 Neb. 651, 111 N.W. 586 (1907).

Jurisdiction of Supreme Court limited in both original and appellate, former by Constitution, latter by statutes. Johnson v. Parrotte, 46 Neb. 51, 64 N.W. 363 (1895).

Supreme Court has no original jurisdiction to try contested elections. Miller v. Wheeler, 33 Neb. 765, 51 N.W. 137 (1892).

Supreme Court is intended as court of review of judgments of district court. Bell v. Templin, 26 Neb. 249, 41 N.W. 1093 (1889).

State Supreme Court on appeal from decision of State Board of Equalization in proceedings involving valuation and assessment of railroad property for taxation acts in judicial, and not in administrative capacity. Chicago & N. W. Ry. Co. v. Bauman, 69 F.2d 171 (8th Cir. 1934).

**3. Miscellaneous**

Absent a concurrent basis for jurisdiction over the subject matter of a declaratory judgment action, the Supreme Court of Nebraska does not have original jurisdiction to address declaratory judgment actions. State ex rel. Wieland v. Moore, 252 Neb. 253, 561 N.W.2d 230 (1997).

Since five judges of the court do not hold that sections 85-1,118 to 85-1,123 are unconstitutional, the sections are constitutional. State ex rel. Spire v. Beermann, 235 Neb. 384, 455 N.W.2d 749 (1990).

District judge was empowered to sit with all the powers of the Supreme Court under this provision. ConAgra, Inc. v. Cargill, Inc., 223 Neb. 92, 388 N.W.2d 458 (1986).

Purpose of this provision was to create an elastic system which would enable the court to clear its docket, keep it so, and ultimately allow matters to be determined by a full court of seven judges. ConAgra, Inc. v. Cargill, Inc., 223 Neb. 92, 388 N.W.2d 458 (1986).

The Nebraska Constitution clearly permits district court judges, retired or not, to act as associate Supreme Court judges when necessary for prompt submission and determination of causes. ConAgra, Inc. v. Cargill, Inc., 223 Neb. 92, 388 N.W.2d 458 (1986).

Case on appeal first heard by a division of the Supreme Court and opinion adopted was set for reargument before the full court, and by it affirmed. State v. Schrader, 196 Neb. 632, 244 N.W.2d 498 (1976).

Cited in determining constitutionality of law relating to sale of school lands. State ex rel. Belker v. Board of Educational Lands & Funds, 184 Neb. 621, 171 N.W.2d 156 (1969).

Cited in determining constitutionality of section of Juvenile Court Act. DeBacker v. Brainard, 183 Neb. 461, 161 N.W.2d 508 (1968).

Except in the exercise of its appellate jurisdiction, the Supreme Court is a court of limited and enumerated powers. Sorensen v. Swanson, 181 Neb. 205, 147 N.W.2d 620 (1967).

District judge may be designated to act as Judge of Supreme Court whenever necessary for prompt submission and determination of causes. Ruehle v. Ruehle, 161 Neb. 691, 74 N.W.2d 689 (1956).

Legislative act cannot be held unconstitutional except by concurrence of five Judges of Supreme Court. Sommerville v. Johnson, 149 Neb. 167, 30 N.W.2d 577 (1948); Mehrens v. Greenleaf, 119 Neb. 82, 227 N.W. 325 (1929).

Constitutional questions will not be decided unless necessary to a determination of the case and the protection of some substantial right. State ex rel. Nelson v. Butler, 145 Neb. 638, 17 N.W.2d 683 (1945).

Suit involving constitutional question may be decided on stipulation that absent Justice should participate on briefs. Bauer v. State Game, Forestation & Parks Commission, 138 Neb. 436, 293 N.W. 282 (1940).

Power to correct errors in their own proceedings is inherent in all courts of general jurisdiction.

Gate City Co. v. Douglas County, 135 Neb. 531, 282 N.W. 532 (1938).

Private rights of parties which have been vested by the judgment of a court cannot be taken away by subsequent legislation. Mooney v. Drainage Dist. No. 1 of Richardson County, 134 Neb. 192, 278 N.W. 368 (1938).

It is the duty of the Supreme Court not to legislate but to expound the law as written. Ray v. Sanitary Garbage Co., 134 Neb. 178, 278 N.W. 139 (1938).

The Supreme Court has inherent constitutional powers to determine whether facts on which emergency legislation is based have ceased to exist or ever did, in fact, exist. First Trust Co. of Lincoln v. Smith, 134 Neb. 84, 277 N.W. 762 (1938).

Supreme Court is constituted a separate class with respect to payment of salary. State ex rel. Day v. Hall, 129 Neb. 699, 262 N.W. 850 (1935); State ex rel. Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935).

The word "revenue" refers only to those revenues for general state administration and not to those of municipal corporation. Aachen & Munich Fire Insurance Co. v. City of Omaha, 72 Neb. 112, 100 N.W. 137 (1904).

Proceeding by quo warranto is as civil remedy, and is the means employed by state to cancel and recall privilege which corporation has abused. State v. Standard Oil Co., 61 Neb. 28, 84 N.W. 413 (1900); State v. Nebraska Distilling Co., 29 Neb. 700, 46 N.W. 155 (1890).

Jury trial in original quo warranto action in Supreme Court is not demandable as of right. State ex rel. Broatch v. Moores, 56 Neb. 1, 76 N.W. 530 (1898).

**V-3. Terms of Supreme Court.**

At least two terms of the supreme court shall be held each year, at the seat of government.

**Source:**Neb. Const. art. VI, sec. 3 (1875); Transferred by Constitutional Convention, 1919-1920, art. V, sec. 3.

**V-4. Chief Justice and Judges of the Supreme Court; selection; residence; location of offices.**

The Chief Justice and the Judges of the Supreme Court shall be selected as provided in this Article V. They may reside at the place where the court is located but shall reside within the state, and no Chief Justice or Judge of the Supreme Court shall be deemed thereby to have lost his or her residence at the place from which he or she was selected. The offices of the Chief Justice and Judges of the Supreme Court shall be at the place where the court is located.

**Source:**Neb. Const. art. VI, sec. 4 (1875); Amended 1908, Laws 1907, c. 202, sec. 2, p. 581; Amended 1920, Constitutional Convention, 1919-1920, No. 17; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 4; Amended 1962, Laws 1961, c. 252, sec. 2(2), p. 742; Amended 1998, Laws 1998, LR 303CA, sec. 1.

**Annotation**

Judges of the Supreme Court are created as a distinct class for all purposes of legislation affecting them. State ex rel. Day v. Hall, 129 Neb. 699, 262 N.W. 850 (1935); State ex rel. Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935).

**V-5. Supreme Court judicial districts; redistricting; when.**

The Legislature shall divide the state into six contiguous and compact districts of approximately equal population, which shall be numbered from one to six, which shall be known as the Supreme Court judicial districts. The Legislature shall redistrict the state after each federal decennial census. In any such redistricting, county lines shall be followed whenever practicable, but other established lines may be followed at the discretion of the Legislature. Such districts shall not be changed except upon the concurrence of a majority of the members of the Legislature. Whenever the Supreme Court is redistricted, the judges serving prior to the redistricting shall continue in office, and the law providing for such redistricting shall where necessary specify the newly established districts which they shall represent for the balance of their terms.

**Source:**Neb. Const. art. VI, sec. 5 (1875); Amended 1908, Laws 1907, c. 202, sec. 3, p. 581; Amended 1912, Laws 1911, c. 226, sec. 1, p. 679; Amended 1920, Constitutional Convention, 1919-1920, No. 17; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 5; Amended 1962, Laws 1961, c. 252, sec. 2(2), p. 742; Amended 1970, Laws 1969, c. 421, sec. 1, p. 1437.

**Annotation**

Neither this section nor section 7 makes any mention of application to substitute judges. ConAgra, Inc. v. Cargill, Inc., 223 Neb. 92, 388 N.W.2d 458 (1986).

**V-6. Chief Justice to preside.**

The Chief Justice shall preside at all terms and sittings of the supreme court, and in his absence or disability the judges present shall select one of their number chief justice pro tempore.

**Source:**Neb. Const. art. VI, sec. 6 (1875); Amended 1908, Laws 1907, c. 202, sec. 4, p. 582; Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 6.

**V-7. Chief Justice; Associate Justices; qualifications.**

No person shall be eligible to the office of Chief Justice or Judge of the Supreme Court unless he shall be at least thirty years of age, and a citizen of the United States, and shall have resided in this state at least three years next preceding his selection; nor, in the case of a Judge of the Supreme Court selected from a Supreme Court judicial district, unless he shall be a resident and elector of the district from which selected.

**Source:**Neb. Const. art. VI, sec. 7 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 7; Amended 1962, Laws 1961, c. 252, sec. 2(2), p. 742.

**Annotation**

Neither this section nor section 5 makes any mention of application to substitute judges. ConAgra, Inc. v. Cargill, Inc., 223 Neb. 92, 388 N.W.2d 458 (1986).

Unlike officer designated in this section, there is no requirement that candidate for office of Secretary of State be a resident of the state. State ex rel. Brazda v. Marsh, 141 Neb. 817, 5 N.W.2d 206 (1942).

**V-8. Supreme Court appoint staff; budget; copyright of state reports.**

The Supreme Court shall appoint such staff as may be needed for the proper dispatch of the business of the court. The court shall prepare and recommend to each session of the Legislature a budget of the estimated expenses of the court. The copyright of the state reports shall forever remain the property of the state.

**Source:**Neb. Const. art. VI, sec. 8 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 8; Amended 1972, Laws 1971, LB 333, sec. 1; Amended 1990, Laws 1990, LR 8, sec. 1.

**V-9. District courts; jurisdiction; felons may plead guilty; sentence.**

The district courts shall have both chancery and common law jurisdiction, and such other jurisdiction as the Legislature may provide; and the judges thereof may admit persons charged with felony to a plea of guilty and pass such sentence as may be prescribed by law.

**Source:**Neb. Const. art. VI, sec. 9 (1875); Transferred by Constitutional Convention, 1919-1920, art. V, sec. 9.

**Annotation**

**1. Jurisdiction in general**
**2. Equity jurisdiction**
**3. Criminal jurisdiction**
**4. Miscellaneous**

**1. Jurisdiction in general**

The Nebraska Constitution places original sentencing authority in the district courts and does not provide sentencing as one of the Supreme Court's powers. State v. Reeves, 258 Neb. 511, 604 N.W.2d 151 (2000).

Jurisdiction in suits for an injunction are in the district courts which cannot be legislatively limited or controlled. Omaha Fish and Wildlife Club, Inc. v. Community Refuse, Inc., 208 Neb. 110, 302 N.W.2d 379 (1981).

District court had inherent power to punish for contempt of court which Legislature could not limit. State ex rel. Beck v. Frontier Airlines, Inc., 174 Neb. 172, 116 N.W.2d 281 (1962).

District court alone has jurisdiction over controversy between adverse claimants with respect to interpretation of testamentary trust. In re Trust Estate of Myers, 151 Neb. 255, 37 N.W.2d 228 (1949).

While Legislature may grant to district court such other jurisdiction as it may deem proper, it can not limit or take from such courts the general jurisdiction conferred by the Constitution. State ex rel Wright v. Barney, 133 Neb. 676, 276 N.W. 676 (1937).

Judicial department of government must protect its jurisdiction at boundaries of power fixed by the Constitution. State ex rel. Sorensen v. Mitchell State Bank, 123 Neb. 120, 242 N.W. 283 (1932); State ex rel. Sorensen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

Where cause is properly before equity court, the appointment of receiver for failed or insolvent bank is judicial function hereunder, not subject to executive or legislative control. State ex rel. Sorenesen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

This section refers to jurisdiction of court as such, rather than to duties of judge when acting as court. State ex rel. Thompson v. Neble and Latenser, 82 Neb. 267, 117 N.W. 723 (1908).

Jurisdiction over the subject matter cannot be conferred by consent of parties. Crawford Co. v. Hathaway, 61 Neb. 317, 85 N.W. 303 (1901).

Where Legislature confers right without special tribunal for its enforcement, district court has jurisdiction. Armstrong v. Mayer, 60 Neb. 423, 83 N.W. 401 (1900); Foxworthy v. Lincoln & F. R. R. Co., 13 Neb. 398, 14 N.W. 394 (1882).

Legislature may provide original jurisdiction for district court other than that enumerated in Constitution. Arnold v. Weimer, 40 Neb. 216, 58 N.W. 709 (1894).

**2. Equity jurisdiction**

The equity jurisdiction of the district court is granted by the Constitution and cannot be legislatively limited or controlled. K N Energy, Inc. v. City of Scottsbluff, 233 Neb. 644, 447 N.W.2d 227 (1989).

The equity jurisdiction granted the district court hereby cannot be legislatively limited or controlled. Village of Springfield v. Hevelone, 195 Neb. 37, 236 N.W.2d 811 (1975).

An action in equity to partition personal property may be brought in the district court by one owning an undivided interest therein against the administrator of the estate of a deceased person. Hoover v. Haller, 146 Neb. 697, 21 N.W.2d 450 (1946).

An equity court has inherent jurisdiction over the administration of charitable trusts. John A. Creighton Home v. Waltman, 140 Neb. 3, 299 N.W. 261 (1941).

The district court has jurisdiction to compel specific performance of contract to leave property to another by bequest, even though the property is personalty. Cox v. Johnston, 139 Neb. 223, 296 N.W. 883 (1941).

The insurance code in no way curbs or abridges the constitutional, common law or equity powers of the district court. Clark v. Lincoln Liberty Life Ins. Co., 139 Neb. 65, 296 N.W. 449 (1941).

The equity power conferred by the Constitution on district courts is ample to grant relief in case

where default judgment was obtained through negligence and fraud of attorney and term had expired. Seward v. Churn Ranch Co., 136 Neb. 804, 287 N.W. 610 (1939).

District courts have jurisdiction to hear and determine whether owner of agricultural lands included in corporate limits of city is entitled to have same disconnected therefrom. Witham v. City of Lincoln, 125 Neb. 366, 250 N.W. 247 (1933).

District courts have constitutional equity jurisdiction exercisable without legislative enactment. State ex rel. Sorensen v. Nebraska State Bank of Bloomfield, 124 Neb. 449, 247 N.W. 31 (1933); State v. Odd Fellows Hall Assn., 123 Neb. 440, 243 N.W. 616 (1932).

Equity jurisdiction exists independently of statute and comes from the Constitution. Hall v. Hall, 123 Neb. 280, 242 N.W. 607 (1932).

Equity jurisdiction vested in district courts hereby is beyond Legislature's power to limit or control, and extends to administration of trusts. State ex rel. Sorensen v. Farmers State Bank of Polk, 121 Neb. 532, 237 N.W. 857 (1931); Burnham v. Bennison, 121 Neb. 291, 236 N.W. 745 (1931).

Court has chancery power hereunder to enforce rule of laches barring suit to cancel special assessments brought after four years by parties who petitioned for improvements. Tombrink v. Sarpy County, 120 Neb. 160, 231 N.W. 783 (1930).

District courts have constitutional equity jurisdiction which may be exercised without legislative enactment. Matteson v. Creighton University, 105 Neb. 219, 179 N.W. 1009 (1920).

Equity jurisdiction is beyond power of Legislature to limit or control. Lacey v. Zeigler, 98 Neb. 380, 152 N.W. 792 (1915).

**3. Criminal jurisdiction**

Under this provision, jail time is to be imposed by judges. The trial court may not delegate the authority to impose a jail sentence, or to eliminate a jail sentence, to a nonjudge. State v. Lee, 237 Neb. 724, 467 N.W.2d 661 (1991).

District courts have such jurisdiction in criminal cases as may be provided by law. State v. Furstenau, 167 Neb. 439, 93 N.W.2d 384 (1958).

Judges of district court may admit persons charged with a felony to plead guilty. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

Court, after sentence for less than minimum term prescribed by statute has been served, is without power to vacate it and impose greater penalty. Hickman v. Fenton, 120 Neb. 66, 231 N.W. 510 (1930).

Entire criminal code of Nebraska proceeds upon the principle that a plea of guilty, where it may be received unreservedly, is a waiver of the right to a trial by jury. Smith v. Olson, 44 F.Supp. 456 (D. Neb. 1942).

**4. Miscellaneous**

Purpose of the medical review panel under the Nebraska Hospital-Medical Liability Act is to provide expert opinion only, not arbitrate the dispute or dispose of the claim. Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).

Divorce decree providing for child support is subject to power of district court over its processes and decrees in furtherance of justice. Wassung v. Wassung, 136 Neb. 440, 286 N.W. 340 (1939).

Combining legal and equitable causes of action does not conflict with Constitution. Turner v. Althaus, 6 Neb. 54 (1877).

**V-10. District court judicial districts.**

The state shall be divided into district court judicial districts. Until otherwise provided by law, the boundaries of the judicial districts and the number of judges of the district courts shall remain as now fixed. The judges of the district courts shall be selected from the respective districts as provided in this Article V.

**Source:**Neb. Const. art. VI, sec. 10 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 10; Amended 1962, Laws 1961, c. 252, sec. 2(2), p. 742.

**Annotation**

Under former law, district judge must have been elected for each judicial district. State ex rel. Polk v. Galusha, 74 Neb. 188, 104 N.W. 197 (1905).

Under former law, judges of district court were elected for a term of four years. State ex rel. Wheeler v. Stuht, 52 Neb. 209, 71 N.W. 941 (1897).

Unorganized territory is part of the judicial district of county to which it is attached. State v. Page, 12 Neb. 386, 11 N.W. 495 (1882); Ex parte Crawford, 12 Neb. 379, 11 N.W. 494 (1882).

County cannot be part of two judicial districts. Olive v. State, 11 Neb. 1, 7 N.W. 444 (1881).

District judge is state, not county, officer. Jones v. York County, 26 F.2d 623 (8th Cir. 1928).

**V-11. District court judges; change of number; boundaries.**

The Legislature may change the number of judges of the district courts and alter the boundaries of judicial districts. Such change in number or alterations in boundaries shall not vacate the office of any judge. Such districts shall be formed of compact territory bounded by county lines.

**Source:**Neb. Const. art. VI, sec. 11 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 11; Amended 1972, Laws 1971, LB 303, sec. 1.

**Annotation**

The Governor must approve bills increasing number of districts. State ex rel. Main v. Crounse, 36 Neb. 835, 55 N.W. 246 (1893).

Legislature may provide additional judges of district court. State ex rel. Morton v. Stevenson, 18 Neb. 416, 25 N.W. 585 (1885).

**V-12. District court judges may hold court for each other; retired judges, temporary duty.**

The judges of the district court may hold court for each other and shall do so when required by law or when ordered by the Supreme Court. The Legislature may provide that any judge of the district court who has retired may be called upon for temporary duty by the Supreme Court.

**Source:**Neb. Const. art. VI, sec. 12 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 12; Amended 1970, Laws 1969, c. 420, sec. 1, p. 1434.

**Annotation**

Section 24-729 was enacted in response to this provision. ConAgra, Inc. v. Cargill, Inc., 223 Neb. 92, 388 N.W.2d 458 (1986).

District court is court of general jurisdiction of this state divided into judicial districts for the transaction of business; district court is one court of general jurisdiction with interchangeable judges, all exercising the same jurisdiction. Garrotto v. McManus, 185 Neb. 644, 177 N.W.2d 570 (1970).

Supreme Court is given power to order a district judge to serve in a district other than his own. Ruehle v. Ruehle, 161 Neb. 691, 74 N.W.2d 689 (1956).

District judge had jurisdiction to preside over murder trial in another district during absence of regular judge. Iron Bear v. Jones, 149 Neb. 651, 32 N.W.2d 125 (1948).

A district judge is not disqualified to serve in the district court of another district in the state. Rhodes v. Van Steenberg, 225 F.Supp. 113 (D. Neb. 1963).

**V-13. Supreme and district judges; salaries.**

The chief justice, the judges of the supreme court and the judges of the district court shall receive such salaries as may be provided by law.

**Source:**Neb. Const. art. VI, sec. 13 (1875); Amended 1908, Laws 1907, c. 202, sec. 5, p. 582; Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 13.

**Annotation**

Legislature had authority to increase during term salaries of Judges of Supreme Court provided to be paid by temporary salary schedule of Constitution. State ex rel. Johnson v. Marsh, 149 Neb. 1, 29 N.W.2d 799 (1947).

Act of 1933, purporting to reduce salaries of judges and other state officers, was unconstitutional. State ex rel. Day v. Hall, 129 Neb. 699, 262 N.W. 850 (1935); State ex rel. Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935).

**V-14. Supreme and district judges not to act as attorneys; judge not to practice law, when.**

No judge of the Supreme or district courts shall act as attorney or counsellor at law in any manner whatsoever. No judge shall practice law in any court in any matter arising in or growing out of any proceedings in his own court.

**Source:**Neb. Const. art. VI, sec. 14 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 14; Amended 1970, Laws 1969, c. 419, sec. 1(1), p. 1432.

**Annotation**

Participation of county judge as counsel for interested parties was in violation of this section. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

Participation in litigation by county judge was improper and subject to censure. State ex rel. Nebraska State Bar Assn. v. Bates, 162 Neb. 652, 77 N.W.2d 302 (1956).

County judge cannot practice in any proceeding brought in his own court. State ex rel. Nebraska State Bar Assn. v. Wiebusch, 153 Neb. 583, 45 N.W.2d 583 (1951).

County judge may not appear as counsel in any matter in his own court. Tucker v. Heirs of Myers, 151 Neb. 359, 37 N.W.2d 585 (1949).

**V-15. Repealed 1970. Laws 1969, c. 419, sec. 1(2), p. 1432.**

**V-16. Repealed 1970. Laws 1969, c. 419, sec. 1(2), p. 1432.**

**V-17. Repealed 1970. Laws 1969, c. 419, sec. 1(2), p. 1432.**

**V-18. Repealed 1970. Laws 1969, c. 419, sec. 1(2), p. 1432.**

**V-19. Practice of all courts to be uniform.**

The organization, jurisdiction, powers, proceedings, and practice of all courts of the same class or grade, so far as regulated by law and the force and effect of the proceedings, judgments and decrees of such courts, severally, shall be uniform.

**Source:**Neb. Const. art. VI, sec. 19 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 19.

**Annotation**

Legislature may provide for election, term, and districts for justices, and also may substitute

other court for justice in metropolitan city. State ex rel. Bunce v. Kubat, 110 Neb. 362, 193 N.W. 754 (1923).

This section does not prohibit establishing of local courts inferior to district court in municipal corporations. State ex rel. Magney v. Hunter, 99 Neb. 520, 156 N.W. 975 (1916).

Uniformity is not violated if all courts of same grade have jurisdiction over same matters and of equal authority. Moores v. State ex rel. Gordon, 63 Neb. 345, 88 N.W. 514 (1901); State ex rel. Smyth v. Magney, 52 Neb. 508, 72 N.W. 1006 (1897).

Law giving authority to prosecute by information does not violate requirement of uniformity. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

Legislature cannot give to district court power or authority to remove from office police judge of one class of cities. Gordon v. Moores, 61 Neb. 345, 85 N.W. 298 (1901).

Law applying to all counties adopting township organization is uniform. Van Horn v. State ex rel. Abbott, 46 Neb. 62, 64 N.W. 365 (1895).

Law which is general and uniform throughout state, operating alike upon all persons and localities of a class who are brought within relations and circumstances provided for, is not wanting in uniformity. State ex rel. Crawford v. Norris, 37 Neb. 299, 55 N.W. 1086 (1893); State ex rel. Selden v. Berka, 20 Neb. 375, 30 N.W. 267 (1886).

**V-20. Officers in this Article; tenure; residence; duties; compensation.**

All officers provided for in this Article shall hold their offices until their successors shall be qualified and they shall respectively reside in the district or county from which they shall be selected. All officers, when not otherwise provided for in this Article, shall perform such duties and receive such compensation as may be prescribed by law.

**Source:**Neb. Const. art. VI, sec. 20 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 20; Amended 1962, Laws 1961, c. 252, sec. 2(2), p. 742; Amended 1970, Laws 1969, c. 419, sec. 1, p. 1432.

**Annotation**

Elections for police judge must be held along with general election of other constitutional officers. State ex rel. McDermott v. Reilly, 94 Neb. 232, 142 N.W. 923 (1913), rehearing denied 94 Neb. 238, 143 N.W. 200 (1913); State ex rel. Benson v. Mayor and Council of the City of Hastings, 91 Neb. 304, 135 N.W. 1028 (1912).

Term includes period for which incumbent may hold over until his successor has qualified. State ex rel. Polk v. Galusha, 74 Neb. 188, 104 N.W. 197 (1905).

The term of a constitutional officer can neither be extended nor shortened by legislative act. State ex rel. Gordon v. Moores, 70 Neb. 48, 96 N.W. 1011 (1903); State ex rel. Wheeler v. Stuht, 52 Neb. 209, 71 N.W. 941 (1897).

Office of police judge falls within provisions of this section. State ex rel. Gordon v. Moores, 61 Neb. 9, 84 N.W. 399 (1900).

Territorial jurisdiction of justice of the peace is precinct for which he was elected or appointed, but judgment rendered in any other precinct is not void for that reason alone. Jones v. Church of the Holy Trinity, 15 Neb. 81, 17 N.W. 362 (1883).

District judge is state, not county, officer. Jones v. York County, 26 F.2d 623 (8th Cir. 1928).

**V-21. Merit plan for selection of judges; terms of office; filling of vacancies; procedure; voting for nominee.**

(1) In the case of any vacancy in the Supreme Court or in any district court or in such other court or courts made subject to this provision by law, such vacancy shall be filled by the Governor from a list of at least two nominees presented to him by the appropriate judicial nominating commission. If the Governor shall fail to make an appointment from the list within sixty days from the date it is presented to him, the appointment shall be made by the Chief Justice or the acting Chief Justice of the Supreme Court from the same list.

(2) In all other cases, any vacancy shall be filled as provided by law.

(3) At the next general election following the expiration of three years from the date of appointment of any judge under the provisions of subsection (1) of this section and every six years thereafter as long as such judge retains office, each Justice or Judge of the Supreme Court or district court or such other court or courts as the Legislature shall provide shall have his right to remain in office subject to approval or rejection by the electorate in such manner as the Legislature shall provide; *Provided,* that every judge holding or elected to an office described in subsection (1) of this section on the effective date of this amendment whether by election or appointment, upon qualification shall be deemed to have been selected and to have once received the approval of the electorate as herein provided, and shall be required to submit his right to continue in office to the approval or rejection of the electorate at the general election next preceding the expiration of the term of office for which such judge was elected or appointed, and every six years thereafter. In the case of the Chief Justice of the Supreme Court, the electorate of the entire state shall vote on the question of approval or rejection. In the case of any Judge of the Supreme Court, other than the Chief Justice, and any judge of the district court or any other court made subject to subsection (1) of this section, the electorate of the district from which such judge was selected shall vote on the question of such approval or rejection.

(4) There shall be a judicial nominating commission for the Chief Justice of the Supreme Court and one for each judicial district of the Supreme Court and of the district court and one for each area or district served by any other court made subject to subsection (1) of this section by law. Each judicial nominating commission shall consist of nine members, one of whom shall be a Judge of the Supreme Court who shall be designated by the Governor and shall act as chairman, but shall not be entitled to vote. The members of the bar of the state residing in the area from which the nominees are to be selected shall designate four of their number to serve as members of said commission, and the Governor shall appoint four citizens, not admitted to practice law before the courts of the state, from among the residents of the same geographical area to serve as members of said commission. Not more than four of such voting members shall be of the same political party. The terms of office for members of each judicial nominating commission shall be staggered and shall be fixed by the Legislature. The nominees of any such commission cannot include a member of such commission or any person who has served as a member of such commission within a period of two years immediately preceding his

nomination or for such additional period as the Legislature shall provide. The names of candidates shall be released to the public prior to a public hearing.

(5) Members of the nominating commission shall vote for the nominee of their choice by roll call. Each candidate must receive a majority of the voting members of the nominating commission to have his name submitted to the Governor.

**Source:**Neb. Const. art. VI, sec. 21 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 21; Amended 1962, Laws 1961, c. 252, sec. 2(2), p. 742; Amended 1972, Laws 1972, LB 1199, sec. 1.

**Annotation**

Pursuant to subsection (1) of this section, judicial offices are filled by appointment. Neb. Account. & Disc. Comm. v. Citizens for Resp. Judges, 256 Neb. 95, 588 N.W.2d 807 (1999).

Judge appointed pursuant to this section appointed to independent term and enters upon full term of office upon appointment and qualification. Garrotto v. McManus, 185 Neb. 644, 177 N.W.2d 570 (1970).

Vacancies in office of municipal judge are to be filled under this section. State ex rel. Hunter v. Maguire, 136 Neb. 365, 285 N.W. 921 (1939).

Where no time to nominate candidates to fill vacancies in Supreme Court, Governor's appointee holds until successor is regularly elected. State ex rel. Oleson v. Minor, 105 Neb. 228, 180 N.W. 84 (1920).

Where one elected to office of county judge failed to take oath and file bond within required time, but soon thereafter qualified, before any vacancy declared, right to office was not forfeited. Duffy v. State ex rel. Edson, 60 Neb. 812, 84 N.W. 264 (1900).

Vacancy in office of county judge is filled under provisions of general election law. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895).

**V-22. State may sue and be sued.**

The state may sue and be sued, and the Legislature shall provide by law in what manner and in what courts suits shall be brought.

**Source:**Neb. Const. art. VI, sec. 22 (1875); Transferred by Constitutional Convention, 1919-1920, art. V, sec. 22.

**Annotation**

**1. Suit by state**
**2. Suit against state**
**3. Appeal from disallowance of claim**
**1. Suit by state**
State may sue in its own name to seek enforcement of public right or restrain public wrong. State v. Pacific Express Co., 80 Neb. 823, 115 N.W. 619 (1908).

When state invokes judgment of court it lays aside its sovereignty. State ex rel. Smyth v. Kennedy, 60 Neb. 300, 83 N.W. 87 (1900).

Constitutional provision that state may sue and be sued is not self-executing. O'Connor v. Slaker, 22 F.2d 147 (8th Cir. 1927).

**2. Suit against state**

This provision is not self-executing, but instead requires legislative action for waiver of the State's sovereign immunity. Livengood v. Nebraska State Patrol Ret. Sys., 273 Neb. 247, 729 N.W.2d 55 (2007).

This section is not self-executing, but requires legislative action for waiver of a state's sovereign immunity. Riley v. State, 244 Neb. 250, 506 N.W.2d 45 (1993).

This provision, concerning a waiver of sovereign immunity, is not self-executing, but requires legislative action to waive the state's sovereign immunity. Concerned Citizens v. Department of Environ. Contr., 244 Neb. 152, 505 N.W.2d 654 (1993).

Trial court erred in assessing fees and expenses incurred by a special prosecutor in a civil child support action in the absence of a statute permitting such an award. State on behalf of Garcia v. Garcia, 238 Neb. 455, 471 N.W.2d 388 (1991).

This section is not self-executing. Legislative action is necessary to make it available. Gentry v. State, 174 Neb. 515, 118 N.W.2d 643 (1962).

Legislative consent is not necessary to maintenance of suit against state seeking to recover under the Constitution damages arising as the result of improper construction of state highway. Schmutte v. State, 147 Neb. 193, 22 N.W.2d 691 (1946).

In a workmen's compensation case, special appearance of state should have been sustained in view of fact that Legislature had failed to provide manner in which service of process may be had against the state or a department of state government. Callen v. State, 137 Neb. 192, 288 N.W. 547 (1939).

Constitutional provision relating to suits against state is not self-executing and legislative action is necessary to make it available. Anstine v. State, 137 Neb. 148, 288 N.W. 525 (1939).

Legislature cannot by special act waive sovereignty of state in favor of an individual and authorize such individual to sue for damages due to negligence of state's agents and servants. Cox v. State, 134 Neb. 751, 279 N.W. 482 (1938).

Suit to foreclose mortgage involving real estate to which state has legal title cannot be maintained against state without its consent. Northwestern Mutual Life Ins. Co. v. Nordhues, 129 Neb. 379, 261 N.W. 687 (1935).

Immunity of state from suit does not apply to injunction proceeding to prevent administrative department and its employees from taking possession of land under void award in eminent domain proceedings. Goergen v. Department of Public Works, 123 Neb. 648, 243 N.W. 886 (1932).

Where statutes provide exclusive remedy against state and particular form, one branch of Legislature alone cannot extend jurisdiction beyond that limited by statute or to another forum. McNeel v. State, 120 Neb. 674, 234 N.W. 786 (1931).

Prior to amendment of Workmen's Compensation Act by 1935 special session, neither state nor administrative department thereof could be sued on claim under Workmen's Compensation Act. Eidenmiller v. State, 120 Neb. 430, 233 N.W. 447 (1930).

Resolution by Legislature authorizing recovery for negligence of state employee does not render state liable and no recovery can be had until Legislature by law establishes liability of state therefor. Shear v. State, 117 Neb. 865, 223 N.W. 130 (1929).

State's immunity from suit cannot be waived by voluntary general appearance by Attorney General. McShane v. Murray, 106 Neb. 512, 184 N.W. 147 (1921).

Resolution by Legislature is sufficient authority for claimant to sue state. Lancaster County v. State, 74 Neb. 211, 104 N.W. 187 (1905), affirmed on rehearing 74 Neb. 215, 107 N.W. 388 (1906).

This section has been sufficiently supplemented to permit suits by or against the state. In re Petition of Attorney General, 40 Neb. 402, 58 N.W. 945 (1894).

Nebraska's Uniform Declaratory Judgments Act does not waive the State's sovereign immunity. JHK, Inc. v. Nebraska Dept. of Banking & Finance, 17 Neb. App. 186, 757 N.W.2d 515 (2008).

**3. Appeal from disallowance of claim**

Claims against the state founded on a contract, express or implied, must be presented to the Auditor of Public Accounts, with right of appeal to the courts, but may not be presented to the courts in the first instance. Scotts Bluff County v. State, 133 Neb. 508, 276 N.W. 185 (1937).

To confer jurisdiction on appeal from rejection of claim against state, certified transcript of proceedings before auditor and Secretary of State must be filed in district court. Pickus v. State, 115 Neb. 869, 215 N.W. 129 (1927).

State may be sued in district court where capital located, on claim based on contract with Department of Public Works after disallowance of claim by auditor. Peterson v. State, 113 Neb. 546, 203 N.W. 1002 (1925).

State cannot be sued until after auditor refuses to adjust claim. State v. Lancaster County Bank, 8 Neb. 218 (1879).

## V-23. Jurisdiction of judges at chambers.

The several judges of the courts of record shall have such jurisdiction at chambers as may be provided by law.

**Source:**Neb. Const. art. VI, sec. 23 (1875); Transferred by Constitutional Convention, 1919-1920, art.

V, sec. 23.

**Annotation**

Without a written stipulation of the parties, a district judge can hear application to modify an award of child support in county where the proceeding is pending only. Hanson v. Hanson, 195 Neb. 836, 241 N.W.2d 131 (1976).

Judges at chambers have no inherent authority to rule on motion for new trial. Vasa v. Vasa, 163 Neb. 642, 80 N.W.2d 696 (1957); Mueller v. Keeley, 163 Neb. 613, 80 N.W.2d 707 (1957).

District judges may be given jurisdiction in chambers to impose sentence on plea of guilty. Duggan v. Olson, 146 Neb. 248, 19 N.W.2d 353 (1945).

District judge in chambers had jurisdiction under independent act to enter orders in connection with liquidation of insolvent bank. County of Morrill v. Bliss, 125 Neb. 97, 249 N.W. 98 (1933).

Establishment of municipal court without powers to the judge at chambers does not violate this section. State ex rel. Magney v. Hunter, 99 Neb. 520, 156 N.W. 975 (1916).

Constitution confers no judicial powers on judge of district court at chambers. He can exercise such authority alone as is given by Legislature. Hodgin v. Whitcomb, 51 Neb. 617, 71 N.W. 314 (1897).

**V-24. Style of process.**

All process shall run in the name of "The State of Nebraska," and all prosecutions shall be carried on in the name of "The State of Nebraska."

**Source:**Neb. Const. art. VI, sec. 24 (1875); Transferred by Constitutional Convention, 1919-1920, art. V, sec. 24.

**Annotation**

This section applies in mandamus. State ex rel. Hansen v. Carrico, 86 Neb. 448, 125 N.W. 1110 (1910).

All criminal prosecutions must be by, and carried on in, the name of the "State of Nebraska." Worthen v. County of Johnson, 62 Neb. 754, 87 N.W. 909 (1901).

"State of Nebraska, Gage County, to the Sheriff of said County" complies with this section. Hoyt v. Little, 55 Neb. 71, 75 N.W. 56 (1898).

Under Constitution of 1866 requiring all process to run in the name of "The People of the State of Nebraska," a prosecution under a city ordinance "In the Name of the City" is void. City of Brownville v. Cook, 4 Neb. 101 (1875).

**V-25. Supreme Court to promulgate rules of practice; to make recommendations to Legislature.**

For the effectual administration of justice and the prompt disposition of judicial proceedings, the supreme court may promulgate rules of practice and procedure for all courts, uniform as to each class of courts, and not in conflict with laws governing such matters. To the same end, the court may, and when requested by the Legislature by resolution shall, certify to the Legislature its conclusions as to desirable amendments or changes in the general laws governing such practice and proceedings.

**Source:**Neb. Const. art. VI, sec. 25 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 25; Amended 2000, Laws 1999, LR 18CA, sec. 3.

**Annotation**

**1. Power of Supreme Court**
**2. Rules of practice**
**3. Miscellaneous**

**1. Power of Supreme Court**

The Nebraska Supreme Court is vested with the sole power to admit persons to the practice of law in this state and to fix qualifications for admission to the Nebraska bar. In re Application of Brown, 270 Neb. 891, 708 N.W.2d 251 (2006).

The Nebraska Supreme Court, and only that court, is invested with the power to admit persons to the practice of law and to fix qualifications for admission to the bar. Thus, it has the responsibility to adopt and implement systems designed to protect the public and safeguard the judicial system by assuring that those admitted to the bar are of such character and fitness as to be worthy of the trust and confidence such admission implies. In re Application of Majorek, 244 Neb. 595, 508 N.W.2d 275 (1993).

Rulemaking power of Supreme Court may not be used to change venue set by statute. Peck v. Dunlevey, 184 Neb. 812, 172 N.W.2d 613 (1969).

This section does not limit the judicial power with respect to making rules as qualifications for admission to the bar. State ex rel. Ralston v. Turner, 141 Neb. 556, 4 N.W.2d 302 (1942).

Supreme Court is vested with sole power to admit persons to practice law and fix their qualifications. State ex rel. Wright v. Hinckle, 137 Neb. 735, 291 N.W. 68 (1940).

Supreme Court is vested with sole powers to admit persons to practice law and fix qualifications for admission to the bar, and possesses inherent power to punish for contempt any person assuming to practice law without having been duly licensed to do so. State ex rel. Wright v. Barlow, 131 Neb. 294, 268 N.W. 95 (1936).

Supreme Court is precluded by law from promulgating rules of practice and procedure empowering trial courts to enter nonsuit on conclusion of opening statements to jury. Temple v. Cotton Transfer Co., 126 Neb. 287, 253 N.W. 349 (1934).

**2. Rules of practice**

Rule of practice promulgated, with reference to procurement, service, return, and settlement of bill of exceptions. Neighbors & Danielson v. West Nebraska Methodist Hospital, 162 Neb. 33, 74 N.W.2d 854 (1956).

Rule of practice that court determines punishment to be inflicted on conviction of subsequent offense adhered to. Poppe v. State, 155 Neb. 527, 52 N.W.2d 422 (1952).

Rule of practice established for all courts that imposition of increased penalty for subsequent offense is matter for court and not jury. Haffke v. State, 149 Neb. 83, 30 N.W.2d 462 (1948).

Rule of practice to the effect that plaintiff may, in personal injury action, establish on cross-examination that defendant is indemnified from loss by insurance company, was revoked. Fielding v. Publix Cars, Inc., 130 Neb. 576, 265 N.W. 726 (1936).

Information charging murder in first degree, following statute and form approved by Supreme Court, was sufficient. Hansen v. State, 121 Neb. 169, 236 N.W. 329 (1931).

Pursuant to its right to promulgate rules of practice, Supreme Court had power to prescribe short form of information for murder. Nichols v. State, 109 Neb. 335, 191 N.W. 333 (1922).

Rule of practice that party may not contradict testimony of his own witness set aside, and party may, within court's discretion, be permitted to show contradictory statements by witness before trial. Penhansky v. Drake Realty Constr. Co., 109 Neb. 120, 190 N.W. 265 (1922).

**3. Miscellaneous**

Where a rule of practice promulgated by the Supreme Court is later abrogated and a new rule is promulgated effective on a certain date, the new rule is not retroactive and applicable to cases tried under the former rule. Heineman v. Wilson, 132 Neb. 159, 271 N.W. 346 (1937).

**V-26. Proviso as to effect of amendment.**

If the foregoing amendment shall be adopted by the electors, all existing courts which are not in the foregoing amendment specifically enumerated and concerning which no other provision is herein made, shall continue in existence and exercise their present jurisdiction, and the judges thereof shall receive their present compensation, until otherwise provided by law; and such judges or appointees to fill vacancies shall hold their offices until their successors shall be elected and qualified.

**Source:**Neb. Const. art. VI, sec. 26 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 15; Transferred by Constitutional Convention, 1919-1920, art. V, sec. 26.

**V-27. Juvenile courts; authorization.**

Notwithstanding the provisions of section 9 of this Article, the Legislature may establish courts to be known as juvenile courts, with such jurisdiction and powers as the Legislature may provide. The term, qualification, compensation, and method of appointment or election of the judges of such courts, and the rules governing proceedings therein, may be fixed by the Legislature. The state shall be divided into juvenile court judicial districts that correspond to district court judicial districts until otherwise provided by law. No such court shall be established or afterwards abolished in any juvenile court judicial district unless approved by a majority of those voting on the issue.

**Source:**Neb. Const. art. V, sec. 27 (1958); Adopted 1958, Laws 1957, c. 217, sec. 1, p. 754; Amended 1972, Laws 1971, LB 305, sec. 1.

**Annotation**

As a statutorily created court of limited and special jurisdiction, a juvenile court has only such authority as has been conferred on it by statute. In re Interest of Veronica H., 272 Neb. 370, 721 N.W.2d 651 (2006).

Legislature may establish separate juvenile courts. State ex rel. Weiner v. Hans, 174 Neb. 612, 119 N.W.2d 72 (1963).

**V-28. Commission on Judicial Qualifications; appointment; composition; qualifications.**

The Legislature shall provide for a Commission on Judicial Qualifications consisting of: (1) Three judges, including one district court judge, one county court judge, and one judge of any other court inferior to the Supreme Court as now exists or may hereafter be created by law, all of whom shall be appointed by the Chief Justice of the Supreme Court; (2) three members of the Nebraska State Bar Association who shall have practiced law in this state for at least ten years and who shall be appointed by the Executive Council of the Nebraska State Bar Association; (3) three citizens, none of whom shall be a Justice or Judge of the Supreme Court or judge of any court, active or retired, nor a member of the Nebraska State Bar Association, and who shall be appointed by the Governor; and (4) the Chief Justice of the Supreme Court, who shall serve as its chairperson.

**Source:**Neb. Const. art. V, sec. 28 (1966); Adopted 1966, Laws 1965, c. 301, sec. 1, p. 848; Amended 1980, Laws 1980, LB 82, sec. 1.

**V-29. Commission on Judicial Qualifications; vote of majority required for action.**

The commission shall act by a vote of the majority of its members and no action of the commission shall be valid unless concurred in by the majority of its members.

**Source:**Neb. Const. art. V, sec. 29 (1966); Adopted 1966, Laws 1965, c. 301, sec. 1, p. 848; Amended 1980, Laws 1980, LB 82, sec. 1.

**V-30. Judges; discipline; removal from office; grounds; procedure.**

(1) A Justice or Judge of the Supreme Court or judge of any court of this state may be reprimanded, disciplined, censured, suspended without pay for a definite period of time, not to exceed six months, or removed from office for (a) willful misconduct in office, (b) willful disregard of or failure to perform his or her duties, (c) habitual intemperance, (d) conviction of a crime involving moral turpitude, (e) disbarment as a member of the legal profession licensed to practice law in the State of Nebraska, or (f) conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or he or she may be retired for physical or mental disability seriously interfering with the performance of his or her duties if such disability is determined to be permanent or reasonably likely to become permanent. Any citizen of the State of Nebraska may request the Commission on Judicial Qualifications to consider the qualifications of any Justice or Judge of the Supreme Court or other judge, and in such event the commission shall make such investigation as the commission deems necessary and shall, upon a finding of probable cause, reprimand such Justice or Judge of the Supreme Court or other judge or order a formal open hearing to be held before it concerning the reprimand, discipline, censure, suspension, removal, or retirement of such Justice or Judge of the Supreme Court or other judge. In the alternative or in addition, the commission may request the Supreme Court to appoint one or more

special masters who shall be judges of courts of record to hold a formal open hearing to take evidence in any such matter, and to report to the commission. If, after formal open hearing, or after considering the record and report of the masters, the commission finds that the charges are established by clear and convincing evidence, it shall recommend to the Supreme Court that the Justice or Judge of the Supreme Court or other judge involved shall be reprimanded, disciplined, censured, suspended without pay for a definite period of time not to exceed six months, removed, or retired as the case may be.

(2) The Supreme Court shall review the record of the proceedings and in its discretion may permit the introduction of additional evidence. The Supreme Court shall make such determination as it finds just and proper, and may order the reprimand, discipline, censure, suspension, removal, or retirement of such Justice or Judge of the Supreme Court or other judge, or may wholly reject the recommendation. Upon an order for retirement, the Justice or Judge of the Supreme Court or other judge shall thereby be retired with the same rights and privileges as if he or she had retired pursuant to statute. Upon an order for removal, the Justice or Judge of the Supreme Court or other judge shall be removed from office, his or her salary shall cease from the date of such order, and he or she shall be ineligible for judicial office. Upon an order for suspension, the Justice or Judge of the Supreme Court or other judge shall draw no salary and shall perform no judicial functions during the period of suspension. Suspension shall not create a vacancy in the office of Justice or Judge of the Supreme Court or other judge.

(3) Upon order of the Supreme Court, a Justice or Judge of the Supreme Court or other judge shall be disqualified from acting as a Justice or Judge of the Supreme Court or other judge, without loss of salary, while there is pending (a) an indictment or information charging him or her in the United States with a crime punishable as a felony under Nebraska or federal law or (b) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his or her removal or retirement.

(4) In addition to the procedure set forth in subsections (1) and (2) of this section, on recommendation of the Commission on Judicial Qualifications or on its own motion, the Supreme Court (a) shall remove a Justice or Judge of the Supreme Court or other judge from office when in any court in the United States such justice or judge pleads guilty or no contest to a crime punishable as a felony under Nebraska or federal law, and (b) may suspend a Justice or Judge of the Supreme Court or other judge from office without salary when in any court in the United States such justice or judge is found guilty of a crime punishable as a felony under Nebraska or federal law or of any other crime that involves moral turpitude. If his or her conviction is reversed, suspension shall terminate and he or she shall be paid his or her salary for the period of suspension. If he or she is suspended and his or her conviction becomes final the Supreme Court shall remove him or her from office.

(5) All papers filed with and proceedings before the commission or masters appointed by the Supreme Court pursuant to this section prior to a reprimand or formal open hearing shall be confidential. The filing of papers with and the testimony given before the commission or masters or the Supreme Court shall be deemed a privileged communication.

When the Commission on Judicial Qualifications determines that disciplinary action is warranted, whether it be a reprimand or otherwise, the Commission on Judicial Qualifications shall issue one or more short announcements confirming that a complaint has been filed; stating the subject and nature of the complaint, the disciplinary action recommended or reprimand issued, or the date of the hearing; clarifying the procedural aspects; and reciting the right of a judge to a fair hearing.

When the Commission on Judicial Qualifications determines that disciplinary action is not warranted, and the existence of any investigation or complaint has become publicly known, the judge against whom a complaint has been filed or investigation commenced may waive the confidentiality of papers and proceedings under this subsection.

The Supreme Court shall by rule provide for procedure under this section before the commission, the

masters, and the Supreme Court.

(6) No Justice or Judge of the Supreme Court or other judge shall participate, as a member of the commission, or as a master, or as a member of the Supreme Court, in any proceedings involving his or her own reprimand, discipline, censure, suspension, removal, or retirement.

**Source:**Neb. Const. art. V, sec. 30 (1966); Adopted 1966, Laws 1965, c. 301, sec. 1, p. 848; Amended 1980, Laws 1980, LB 82, sec. 1; Amended 1984, Laws 1984, LR 235, sec. 1.

**Annotation**

Subdivision (1)(e) of this section does not grant authority to the Nebraska State Bar Association to commence disciplinary actions against sitting judges. State ex rel. NSBA v. Krepela, 259 Neb. 395, 610 N.W.2d 1 (2000).

Subsection (3) of this section does not limit suspension with pay to the two instances listed; suspension may be imposed in other instances pursuant to article V, section 1, of the Nebraska Constitution. In re Complaint Against Jones, 255 Neb. 1, 581 N.W.2d 876 (1998).

**V-31. Judges; procedure for removal from office cumulative.**

These amendments are alternative to and cumulative with the methods of removal of Justices and judges provided in Article III, section 17, and Article IV, section 5, of this Constitution, and any other provision of law relating to the methods and manner of the removal of Justices, Judges, and judges of the courts of this state.

**Source:**Neb. Const. art. V, sec. 31 (1966); Adopted 1966, Laws 1965, c. 301, sec. 1, p. 848.

**VI-1. Qualifications of electors.**

Every citizen of the United States who has attained the age of eighteen years on or before the first Tuesday after the first Monday in November and has resided within the state and the county and voting precinct for the terms provided by law shall, except as provided in section 2 of this article, be an elector for the calendar year in which such citizen has attained the age of eighteen years and for all succeeding calendar years.

**Source:**Neb. Const. art. VII, sec. 1 (1875); Amended 1910, Laws 1909, c. 199, sec. 1, p. 666; Amended 1918, Laws 1918, Thirty-sixth Extraordinary Session, c. 11, sec. 1, p. 53; Amended 1920, Constitutional Convention, 1919-1920, No. 18; Transferred by Constitutional Convention, 1919-1920, art. VI, sec. 1; Amended 1970, Laws 1969, c. 422, sec. 1, p. 1438; Amended 1972, Laws 1971, LB 221, sec. 1; Amended 1972, Laws 1971, LB 339, sec. 1; Amended 1988, Laws 1988, LR 248, sec. 1.

**Annotation**

**1. Electors**
**2. Miscellaneous**
**1. Electors**
The question of determining a voter's residence or domicile is a judicial one and should be determined in accordance with principles which were determinative at the time the Constitution was adopted. Dilsaver v. Pollard, 191 Neb. 241, 214 N.W.2d 478 (1974).

This section has no application to a public corporation or political subdivision where it operates in a proprietary capacity. Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966).

Election commissioner may be compelled by mandamus to receive oral testimony as to citizenship of applicant for registration as voter. State ex rel. Williams v. Moorhead, 96 Neb. 559, 148 N.W. 552 (1914).

One temporarily living within state or performing labor therein, whose family resides in another state, is not resident of Nebraska within this section. White v. Slama, 89 Neb. 65, 130 N.W. 978 (1911).

Question of residence is judicial, not one for Legislature. Residence is defined to mean place where one has established his home and is habitually present. Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249 (1895).

Indians are citizens under this section upon compliance with United States laws upon that subject. State ex rel. Crawford v. Norris, 37 Neb. 299, 55 N.W. 1086 (1893).

**2. Miscellaneous**

Levy of tax for municipal university did not violate this section. Ratigan v. Davis, 175 Neb. 416, 122 N.W.2d 12 (1963).

A statute substituting municipal court for justice of peace courts, the election of judge of which court is limited to electors of city where court sits, excluding electors outside city but within jurisdiction of such court, contravenes the Constitution. State ex rel. Wright v. Brown, 131 Neb. 239, 267 N.W. 466 (1936).

This section does not relate to qualifications to hold office. State ex rel. Jordan v. Quible, 86 Neb. 417, 125 N.W. 619 (1910).

Provisions of this section do not apply to elections of officers of local drainage district. State ex rel. Harris v. Hanson, 80 Neb. 724, 115 N.W. 294 (1908).

Provision of Australian Ballot Law requiring signature of two election judges upon ballot is not unconstitutional. Orr v. Bailey, 59 Neb. 128, 80 N.W. 495 (1899).

This section requires residence of six months prior to date of election rather than date of beginning of term of office. Richards v. McMillin, 36 Neb. 352, 54 N.W. 566 (1893).

Status and identification for suffrage purposes are governed by this section. League of Nebraska Municipalities v. Marsh, 253 F.Supp. 27 (D. Neb. 1966).

**VI-2. Who disqualified.**

No person shall be qualified to vote who is non compos mentis, or who has been convicted of treason or felony under the laws of the state or of the United States, unless restored to civil rights.

**Source:**Neb. Const. art. VII, sec. 2 (1875); Transferred by Constitutional Convention, 1919-1920, art.

VI, sec. 2.

**VI-3. Military or naval service; place and manner of voting.**

Every elector in the military or naval service of the United States or of this state may exercise the right of suffrage at such place and under such regulations as may be provided by law.

**Source:**Neb. Const. art. VII, sec. 3 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 19; Transferred by Constitutional Convention, 1919-1920, art. VI, sec. 3.

**VI-4. Repealed 1972. Laws 1971, LB 339, sec. 1.**

**VI-5. Electors; privileged from arrest.**

Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and going to and returning from the same.

**Source:**Neb. Const. art. VII, sec. 5 (1875); Transferred by Constitutional Convention, 1919-1920, art. VI, sec. 5; Amended 1972, Laws 1971, LB 339, sec. 1.

**VI-6. Votes, how cast.**

All votes shall be by ballot or by other means authorized by the Legislature whereby the vote and the secrecy of the elector's vote will be preserved.

**Source:**Neb. Const. art. VII, sec. 6 (1875); Transferred by Constitutional Convention, 1919-1920, art. VI, sec. 6; Amended 1972, Laws 1971, LB 339, sec. 1.

**Annotation**

Secrecy as to how any elector votes is basic to electoral process. Dugan v. Vlach, 195 Neb. 81, 237 N.W.2d 104 (1975).

**VII-1. Legislature; free instruction in common schools; provide.**

The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof.

**Source:**Neb. Const. art. VIII, sec. 1 (1875); Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 1; Amended 1940, Laws 1939, c. 109, sec. 1, p. 477; Amended 1952, Laws 1951, c. 164, sec. 2(3), p. 646; Amended 1954, Laws 1953, c. 174, sec. 1, p. 554; Amended 1970, Laws 1969, c. 423, sec. 1, p. 1439; Amended 1972, Laws 1972, LB 1023, sec. 1.

**Annotation**

**1. Free instruction**
**2. Miscellaneous**
**1. Free instruction**
In the context of student discipline cases, no fundamental right to education exists in Nebraska.

The term "free instruction" is construed in right to education cases as pertinent to the issue of the constitutionality of school financing, including collection of fees, tuition, and taxes. Kolesnick v. Omaha Pub. Sch. Dist., 251 Neb. 575, 558 N.W.2d 807 (1997).

Parents of school children occupying federal farmstead project are residents of public school district in which such lands are situated, and such children are entitled to common school privileges without payment of tuition. Tagge v. Gulzow, 132 Neb. 276, 271 N.W. 803 (1937).

Establishment of municipal university in Omaha was a matter of state concern in accord with duty to provide free instruction in public schools. Carlberg v. Metcalfe, 120 Neb. 481, 234 N.W. 87 (1930).

High school district that receives pupils from another district cannot collect additional tuition fee beyond that fixed by the Legislature. State ex rel. Baldwin v. Dorsey, 108 Neb. 134, 187 N.W. 879 (1922).

Child living with married sister, resident of district, is entitled to attend school without paying tuition. Martins v. School Dist. No. 30 of Cuming County, 101 Neb. 258, 162 N.W. 631 (1917).

Mandamus will not lie to compel school district officers to set aside entire revenue for payment of registered warrants, if effect would be to deprive children of free education. State ex rel. Collins v. Gardner, 79 Neb. 101, 112 N.W. 373 (1907).

Statutes with reference to education should be liberally and broadly construed to provide for free instruction. McNish v. State ex rel. Dimick, 74 Neb. 261, 104 N.W. 186 (1905).

The method and means to be adopted to furnish free instruction is left to the Legislature. Affholder v. State ex rel. McMullen, 51 Neb. 91, 70 N.W. 544 (1897).

Under requirement for free school instruction, public lands were designed to provide funds therefor. It is the duty of Legislature, by proper law, to encourage sale of public lands at best possible price. Washington County v. Fletcher, 12 Neb. 356, 11 N.W. 460 (1882).

**2. Miscellaneous**

The appropriate level of scrutiny in constitutional challenges to school funding decisions is whether the state action is rationally related to a legitimate government purpose. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

This provision of the constitution does not confer a fundamental right to equal and adequate funding of schools. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

Statutory provision authorizing transfer of land from a nonaccredited to an accredited high school district was constitutional. De Jonge v. School Dist. of Bloomington, 179 Neb. 539, 139 N.W.2d 296 (1966).

Matters pertaining to creation and dissolution of school districts are vested in the Legislature. Farrell v. School Dist. No. 54 of Lincoln County, 164 Neb. 853, 84 N.W.2d 126 (1957).

Denial of approval of high school, based on invalid regulation, violated this section. School Dist. No. 39 of Washington County v. Decker, 159 Neb. 693, 68 N.W.2d 354 (1955).

Delegation of legislative powers to a county committee to fix boundaries of school district was constitutional. Nickel v. School Board of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953).

In enacting legislation under this section, Legislature is restrained by other limitations of Constitution. Peterson v. Hancock, 155 Neb. 801, 54 N.W.2d 85 (1952).

This provision is not self-executing. State ex rel. Shineman v. Board of Education of School Dist. No. 33, 152 Neb. 644, 42 N.W.2d 168 (1950).

Expulsion of pupil for contumacious behavior is not violative of this section. Smith v. Johnson, 105 Neb. 61, 178 N.W. 835 (1920).

Teaching of foreign language is not repugnant to theory of "common school," and statute providing for such teaching upon petition of parents is not unconstitutional. State ex rel. Thayer v. School Dist. of Nebraska City, 99 Neb. 338, 156 N.W. 641 (1916).

**VII-2. State Department of Education; general supervision of school system.**

The State Department of Education shall be comprised of a State Board of Education and a Commissioner of Education. The State Department of Education shall have general supervision and administration of the school system of the state and of such other activities as the Legislature may direct.

**Source:**Neb. Const. art. VIII, sec. 2 (1875); Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 2; Amended 1972, Laws 1972, LB 1023, sec. 1.

**Annotation**

Grant of administrative and executive power to the Department of Education is authorized. School Dist. No. 8 of Sherman County v. State Board of Education, 176 Neb. 722, 127 N.W.2d 458 (1964).

**VII-3. State Board of Education; members; election; manner of election; term of office.**

The State Board of Education shall be composed of eight members, who shall be elected from eight districts of substantially equal population as provided by the Legislature. Their term of office shall be for four years each. Their duties and powers shall be prescribed by the Legislature, and they shall receive no compensation, but shall be reimbursed their actual expense incurred in the performance of their duties. The members of the State Board of Education shall not be actively engaged in the educational profession and they shall be elected on a nonpartisan ballot.

**Source:**Neb. Const. art. VIII, sec. 3 (1875); Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 3; Amended 1972, Laws 1972, LB 1023, sec. 1.

**Annotation**

Powers and duties of State Board of Education are prescribed by law. School Dist. No. 8 of Sherman County v. State Board of Education, 176 Neb. 722, 127 N.W.2d 458 (1964).

**VII-4. State Board of Education; Commissioner of Education; appointment; powers; duties.**

The State Board of Education shall appoint and fix the compensation of the Commissioner of Education, who shall be the executive officer of the State Board of Education and the administrative head of the State Department of Education, and who shall have such powers and duties as the Legislature may direct. The board shall appoint all employees of the State Department of Education on the recommendation of the Commissioner of Education.

**Source:**Neb. Const. art. VIII, sec. 4 (1875); Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 4; Amended 1966, Laws 1965, c. 294, sec. 1, p. 836; Amended 1972, Laws 1972, LB 1023, sec. 1.

**VII-5. Fines, penalties, and license money; allocation; use of forfeited conveyances.**

(1) Except as provided in subsections (2) and (3) of this section, all fines, penalties, and license money arising under the general laws of the state, except fines and penalties for violation of laws prohibiting the overloading of vehicles used upon the public roads and highways of this state, shall belong and be paid over to the counties respectively where the same may be levied or imposed, and all fines, penalties, and license money arising under the rules, bylaws, or ordinances of cities, villages, precincts, or other municipal subdivision less than a county shall belong and be paid over to the same respectively. All such fines, penalties, and license money shall be appropriated exclusively to the use and support of the common schools in the respective subdivisions where the same may accrue, except that all fines and penalties for violation of laws prohibiting the overloading of vehicles used upon the public roads and highways shall be placed as follows: Seventy-five per cent in a fund for state highways and twenty-five per cent to the county general fund where the fine or penalty is paid.

(2) Fifty per cent of all money forfeited or seized pursuant to enforcement of the drug laws shall belong and be paid over to the counties for drug enforcement purposes as the Legislature may provide.

(3) Law enforcement agencies may use conveyances forfeited pursuant to enforcement of the drug laws as the Legislature may provide. Upon the sale of such conveyances, the proceeds shall be appropriated exclusively to the use and support of the common schools as provided in subsection (1) of this section.

**Source:**Neb. Const. art. VIII, sec. 5 (1875); Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 5; Amended 1956, Laws 1955, c. 195, sec. 1, p. 558; Amended 1984, Laws 1984, LR 2, sec. 1.

**Annotation**

**1. License money**
**2. Fines and penalties**
**3. Miscellaneous**
**1. License money**
Statute requiring use of hunting and fishing license fees for other than school purposes sustained as constitutional. Wilcox v. Havekost, 144 Neb. 562, 13 N.W.2d 889 (1944).

License fees received by Liquor Control Commission, and imposed for benefit of state, do not go to school fund. School Dist. of Omaha v. Gass, 131 Neb. 312, 267 N.W. 528 (1936).

Act imposing license fees upon persons desiring to fish and hunt in state, and requiring such fees to be paid to State Treasurer for benefit of state school funds is not in conflict with this section. State ex rel. Stevens v. Nickerson, 97 Neb. 837, 151 N.W. 981 (1915).

Where sole purpose of occupation tax is to raise revenue, taxes received are not license money within the meaning of this section. State ex rel. School Dist., City of Auburn v. Boyd, 63 Neb. 829, 89 N.W. 417 (1902).

License money cannot be diverted from school fund under guise of occupation tax. State ex rel. School Dist. of City of Lincoln v. Aitken, 61 Neb. 490, 85 N.W. 395 (1901).

**2. Fines and penalties**

Restitution ordered in an amount not exceeding the actual damage sustained by the victim, pursuant to section 29-2280, is not a penalty within the meaning of this provision and is constitutional. State v. Moyer, 271 Neb. 776, 715 N.W.2d 565 (2006).

Court costs are not fines or penalties within the meaning of this Article and section of the Constitution of Nebraska. DeCamp v. City of Lincoln, 202 Neb. 727, 277 N.W.2d 83 (1979).

The provision of section 48-125, R.R.S.1943, for added amount for waiting time does not impose a penalty to an individual within prohibition of this section. University of Nebraska at Omaha v. Paustian, 190 Neb. 840, 212 N.W.2d 704 (1973).

Forfeited recognizances and cash bail bonds are penalties arising under the general laws of the state and should be distributed to the several school districts of the county. School Dist. of Omaha v. City of Omaha, 175 Neb. 21, 120 N.W.2d 267 (1963).

Fines, penalties, and license money arising under city ordinance are to be apportioned among all school districts in city in proportion to the number of children of school age residing in areas of districts within the city. School Dist. No. 54 of Douglas County ex rel. Hogan v. Howell, 172 Neb. 404, 110 N.W.2d 52 (1961).

Fines, penalties, and license money under general laws of state are apportioned among all school districts in county. School Dist. No. 54 of Douglas County ex rel. Hogan v. School Dist. of Omaha, 171 Neb. 769, 107 N.W.2d 744 (1961).

Collections from violations for overparking under parking-meter ordinance were penalties belonging to school fund. School District of McCook v. City of McCook, 163 Neb. 817, 81 N.W.2d 224 (1957).

Words "fines, penalties, and license money" refer to and include fines imposed in punishment of crimes and misdemeanors and exactions imposed for violation of ordinances having the characteristics of a criminal proceeding, and do not include penalties provided for failure to pay taxes. School District of the City of Omaha v. Adams, 147 Neb. 1060, 26 N.W.2d 24 (1947).

Act that provides for recovery of penalty by county, but does not provide manner of distribution of penalty, does not violate this section. In re Estate of Rogers, 147 Neb. 1, 22 N.W.2d 297 (1946).

Statute making railroad liable to shipper for penalty for delay, in addition to actual damages is void, as all penalties must go to school funds. Sunderland Bros. Co. v. Chicago, B. & Q. R. R. Co., 104 Neb. 319, 179 N.W. 546 (1920).

Statute providing for tax against owner and building adjudged to be liquor nuisance is void as diverting penalty from school fund. State ex rel. McGuire v. Macfarland, 104 Neb. 42, 175 N.W. 663 (1919); State ex rel. English v. Fanning, 97 Neb. 224, 149 N.W. 413 (1914), reversing 96 Neb. 123, 147 N.W. 215 (1914).

Statute imposing only compensatory damages for delay in nature of liquidated damages is valid. Cram v. Chicago, B. & Q. Ry. Co., 85 Neb. 586, 123 N.W. 1045 (1909), 84 Neb. 607, 122 N.W. 31 (1909), affirmed in Chicago, B. & Q. Ry. Co. v. Cram, 228 U.S. 70 (1913).

All fines and penalties, when collected, are required to be paid into the school fund. Sothman v. State, 66 Neb. 302, 92 N.W. 303 (1902).

Act allowing compensation and damages to injured party in case of embezzlement is not a fine or penalty within the meaning of this section. Everson v. State, 66 Neb. 154, 92 N.W. 137 (1902).

Statute fixing fifty dollars damage for failure and refusal of mortgagee to release chattel mortgage is not in conflict with this section. Clearwater Bank v. Kurkonski, 45 Neb. 1, 63 N.W. 133 (1895).

**3. Miscellaneous**

While ordinarily, with respect to state causes of action, punitive damages contravene this section and are not allowed, punitive damages are recoverable in a suit filed in Nebraska state court pursuant to 42 U.S.C. section 1983. State ex rel. Cherry v. Burns, 258 Neb. 216, 602 N.W.2d 477 (1999).

Statute providing for recovery of treble damages in civil action was unconstitutional. Abel v. Conover, 170 Neb. 926, 104 N.W.2d 684 (1960).

Statutory provision making contract wholly void was remedial and not penal. Arthur v. Trindel, 168 Neb. 429, 96 N.W.2d 208 (1959).

This provision has no application to action by borrower asserting violation of Installment Loan Act. McNish v. General Credit Corp., 164 Neb. 526, 83 N.W.2d 1 (1957).

Officer collecting money belonging to school fund is custodian thereof and if he defaults he is ineligible to hold any office created by Constitution or statutes. State ex rel. Broatch v. Moores, 52 Neb. 770, 73 N.W. 299 (1897).

Money collected should be divided pro rata among school districts. King v. State ex rel. School Dist. No. 1, Hall County, 50 Neb. 66, 69 N.W. 307 (1896); Guthrie v. State ex rel. School Dist. No. 7, Sioux County, 47 Neb. 819, 66 N.W. 853 (1896).

**VII-6. Educational lands; management; Board of Educational Lands and Funds; members; appointment; sale of lands.**

No lands now owned or hereafter acquired by the state for educational purposes shall be sold except at public auction under such conditions as the Legislature shall provide. The general management of all lands set apart for educational purposes shall be vested, under the direction of the Legislature, in a board of five members to be known as the Board of Educational Lands and Funds. The members shall be appointed by the Governor, subject to the approval of the Legislature, with such qualifications and for such terms and compensation as the Legislature may provide.

**Source:**Neb. Const. art. VIII, sec. 6 (1875); Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 6; Amended 1972, Laws 1972, LB 1023, sec. 1.

**Annotation**

**1. Powers of Legislature**
**2. Powers of board**
**3. State as trustee**
**4. Miscellaneous**

**1. Powers of Legislature**

This section authorizes Legislature to direct sale of school lands. State ex rel. Belker v. Board of Educational Lands & Funds, 185 Neb. 270, 175 N.W.2d 63 (1970).

Legislature has no power to make a grant in fee of, or an easement over, public school lands without compensation. State ex rel. Johnson v. Central Nebraska Public Power & Irr. Dist., 143 Neb. 153, 8 N.W.2d 841 (1943).

Legislature cannot pass law providing for disposition of school lands otherwise than as provided by Constitution. State v. Tanner, 73 Neb. 104, 102 N.W. 235 (1905).

**2. Powers of board**

Board of Educational Lands and Funds has control and management of school lands. State v. Kidder, 173 Neb. 130, 112 N.W.2d 759 (1962); State v. Cooley, 156 Neb. 330, 56 N.W.2d 129 (1952); State v. Gardner, 156 Neb. 326, 56 N.W.2d 135 (1952).

While there has been change in composition of board, there has been no change in its functions since 1875. State ex rel. Bottcher v. Bartling, 149 Neb. 491, 31 N.W.2d 422 (1948).

Board of Commissioners, under direction of Legislature and subject to terms imposed by it, has power to lease school lands. State v. Platte Valley P. P. & I. Dist., 147 Neb. 289, 23 N.W.2d 300 (1946).

Board is by law in charge of and responsible for the investment of school funds. State v. Bass, 131 Neb. 592, 269 N.W. 68 (1936).

Board of Educational Lands and Funds has executive power over the sale, leasing and general management of school lands under legislative direction. Briggs v. Neville, 103 Neb. 1, 170 N.W. 188 (1918); Fawn Lake Ranch Co. v. Cumbow, 102 Neb. 288, 167 N.W. 75 (1918).

Board of Educational Lands and Funds may, in exercise of reasonable discretion, reject appraisement if it appears too low. State ex rel. Rutledge v. Eaton, 78 Neb. 202, 110 N.W. 709 (1907).

Sole power to handle permanent school funds of state is lodged with board. State ex rel. Crounse v. Bartley, 40 Neb. 298, 58 N.W. 966 (1894).

Board has no jurisdiction or control over disposition of so-called saline lands of state. McMurtry v. Engelhardt, 5 Neb. Unof. 271, 98 N.W. 40 (1904).

**3. State as trustee**

Title to school lands was vested in state upon express trust for support of common schools. State ex rel. Ebke v. Board of Educational Lands & Funds, 159 Neb. 79, 65 N.W.2d 392 (1954).

The state as trustee is without power to bestow a special benefit upon any person or corporation, public or private, at the expense of the cestui que trust, the public school system of the state. State v. Platte Valley Public Power & Irr. Dist., 143 Neb. 661, 10 N.W.2d 631 (1943).

Since state, and not the board or its individual members, is trustee of school fund, suit may not be brought against the board and its individual members for an accounting by a taxpayer, since the suit is essentially one against the state. State ex rel. Walker v. Board of Commissioners for Educational Lands & Funds, 141 Neb. 172, 3 N.W.2d 196 (1942).

**4. Miscellaneous**

Prior to 1940 amendment, Commissioner of Public Lands and Buildings, as statutory officer, had duties to perform. Swanson v. State, 132 Neb. 82, 271 N.W. 264 (1937).

Where board is created by law, no one member having greater power than every other member, board can act only by majority vote. Follmer v. State, 94 Neb. 217, 142 N.W. 908 (1913).

## VII-7. Perpetual funds enumerated.

The following are hereby declared to be perpetual funds for common school purposes, including early childhood educational purposes operated by or distributed through the common schools, of which the annual interest or income only can be appropriated, to wit:

First. Such percent as has been, or may hereafter be, granted by Congress on the sale of lands in this state.

Second. All money arising from the sale or leasing of sections number sixteen and thirty-six in each township in this state, and the lands selected, or that may be selected, in lieu thereof.

Third. The proceeds of all lands that have been, or may hereafter be, granted to this state, where by the terms and conditions of such grant the same are not to be otherwise appropriated.

Fourth. The net proceeds of lands and other property and effects that may come to this state, by escheat or forfeiture, or from unclaimed dividends, or distributive shares of the estates of deceased persons.

Fifth. All other property of any kind now belonging to the perpetual fund.

**Source:**Neb. Const. art. VIII, sec. 7 (1875); Amended 1920, Constitutional Convention, 1919-1920,

No. 20; Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 7; Amended 1972, Laws 1972, LB 1023, sec. 1; Amended 2006, Laws 2006, LB 1006, sec. 1.

**Annotation**

Legislative act providing for offsetting of capital gains against past capital losses held unconstitutional. State ex rel. Bottcher v. Bartling, 149 Neb. 491, 31 N.W.2d 422 (1948).

Act providing for payment out of state school funds of tuition of children whose parent is in military service of United States, stationed in Nebraska, was void. Taylor v. School Dist. of City of Lincoln, 128 Neb. 437, 259 N.W. 168 (1935).

Constitution recognizes the right of the state to acquire land by escheat. In re Estate of O'Connor, 126 Neb. 182, 252 N.W. 826 (1934).

School in part sectarian was not eligible to receive portion of state common school trust funds. State ex rel. Public School Dist. No. 6, Cedar County v. Taylor, 122 Neb. 454, 240 N.W. 573 (1932).

Saline lands granted to state by United States are not included in educational lands under control of Board of Educational Lands and Funds. Chicago, B. & Q. R. R. Co. v. Neville, 102 Neb. 817, 170 N.W. 176 (1918).

Teaching of foreign language is not contrary to public policy of state to provide common schools. State ex rel. Thayer v. School Dist. of Nebraska City, 99 Neb. 338, 156 N.W. 641 (1916).

Sale of school lands to pay special assessment for drainage purposes does not affect right of state in such lands. Morehouse v. Elkhorn River Drainage Dist., 90 Neb. 406, 133 N.W. 446 (1911); McMurtry v. Engelhardt, 5 Neb. Unof. 271, 98 N.W. 40 (1904).

Act of Legislature is not necessary to appropriation and use of funds in order to expend same for purposes expressed in grant. State ex rel. Spencer Lens Co. v. Searle, 77 Neb. 155, 109 N.W. 770 (1906).

Returns of unsold school lands must be applied to support of common schools and not be vested in permanent school fund. State ex rel. McKenzie v. McBride, 5 Neb. 102 (1876).

**VII-8. Trust funds belong to state for educational purposes; use; investment.**

All funds belonging to the state for common school purposes, including early childhood educational purposes operated by or distributed through the common schools, the interest and income whereof only are to be used, shall be deemed trust funds. Such funds with the interest and income thereof are hereby solemnly pledged to the purposes for which they are granted and set apart and shall not be transferred to any other fund for other uses. The state shall supply any net aggregate losses thereof realized at the close of each calendar year that may in any manner accrue. Notwithstanding any other provisions in this Constitution, such funds shall be invested as the Legislature may by statute provide.

**Source:**Neb. Const. art. VIII, sec. 8 (1875); Amended 1920, Constitutional Convention, 1919-1920,

No. 21; Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 8; Amended 1972, Laws 1972, LB 1023, sec. 1; Amended 2006, Laws 2006, LB 1006, sec. 1.

**Annotation**

The public school lands are held in trust for educational purposes. State ex rel. Ebke v. Board of Educational Lands & Funds, 159 Neb. 79, 65 N.W.2d 392 (1954); State ex rel. Ebke v. Board of Educational Lands & Funds, 154 Neb. 244, 47 N.W.2d 520 (1951).

Lease of school land under unconstitutional law was void from inception. Board of Educational Lands & Funds v. Gillett, 158 Neb. 558, 64 N.W.2d 105 (1954).

Persons dealing with school lands do so subject to trust obligation of state. Propst v. Board of Educational Lands & Funds, 156 Neb. 226, 55 N.W.2d 653 (1952).

State is under obligation to replace losses in permanent school fund, which cannot be diminished by application of capital gains. State ex rel. Bottcher v. Bartling, 149 Neb. 491, 31 N.W.2d 422 (1948).

While there is an obligation on the part of the state as trustee to replace shortages in the school fund, the obligation is not self-executing. State ex rel. Walker v. Board of Commissioners for Educational Lands & Funds, 141 Neb. 172, 3 N.W.2d 196 (1942).

Educational funds of state are trust funds, and can only be paid out for purposes specified. Taylor v. School Dist. of City of Lincoln, 128 Neb. 437, 259 N.W. 168 (1935).

Funds derived from grant by Congress of public lands, by contract with the federal government, are held by the state as trustee to carry out the object of the grant. State ex rel. Ledwith v. Brian, 84 Neb. 30, 120 N.W. 916 (1909).

School lands are held in trust by the state. United States v. 78.61 Acres of Land in Dawes & Sioux Counties, 265 F.Supp. 564 (D. Neb. 1967).

**VII-9. Educational funds; trust funds; use; early childhood education endowment fund; created; use; early childhood education, defined.**

(1) The following funds shall be exclusively used for the support and maintenance of the common schools in each school district in the state or for early childhood education operated by or distributed through the common schools as provided in subsection (3) of this section, as the Legislature shall provide:

(a) Income arising from the perpetual funds;

(b) The income from the unsold school lands, except that costs of administration shall be deducted from the income before it is so applied;

(c) All other grants, gifts, and devises that have been or may hereafter be made to the state which are not otherwise appropriated by the terms of the grant, gift, or devise; and

(d) Such other support as the Legislature may provide.

(2) No distribution or appropriation shall be made to any school district for the year in which school is not maintained for the minimum term required by law.

(3)(a) An early childhood education endowment fund shall be created for the purpose of supporting early childhood education in this state as provided by the Legislature.

(b) An amount equal to forty million dollars of the funds belonging to the state for common school and early childhood educational purposes operated by or distributed through the common schools described in Article VII, section 7, of this Constitution shall be allocated for the early childhood education endowment fund.

(c) Only interest or income on such early childhood education endowment fund may be appropriated as provided by the Legislature for the benefit of the common schools and for the exclusive purpose of supporting early childhood education in this state.

(d) For purposes of Article VII of this Constitution, early childhood education means programs operated by or distributed through the common schools promoting development and learning for children from birth to kindergarten-entrance age.

(e) If the annual income from twenty million dollars of private funding is not irrevocably committed by July 1, 2011, to the use of the early childhood education endowment fund, then the forty-million-dollar allocation pursuant to subdivision (3)(b) of this section may revert to the use of the common schools as the Legislature shall determine.

**Source:**Neb. Const. art. VIII, sec. 9 (1875); Amended 1908, Laws 1907, c. 201, sec. 1, p. 580; Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 9; Amended 1966, Laws 1965, c. 302, sec. 2(1), p. 852; Amended 1970, Laws 1969, c. 423, sec. 1, p. 1439; Amended 1972, Laws 1972, LB 1023, sec. 1; Amended 2006, Laws 2006, LB 1006, sec. 1.

**Annotation**

**1. Grants, gifts, and devises**
**2. Miscellaneous**

**1. Grants, gifts, and devises**

Primary purpose of trust is production of income for the support and maintenance of common schools. State ex rel. Ebke v. Board of Educational Lands & Funds, 154 Neb. 244, 47 N.W.2d 520 (1951).

Profit on sale of securities becomes a part of permanent school fund. State ex rel. Bottcher v. Bartling, 149 Neb. 491, 31 N.W.2d 422 (1948).

Since state, and not the board or its individual members, is trustee of school fund, suit may not be brought against the board and its individual members for an accounting by a taxpayer, since the suit is essentially one against the state. State ex rel. Walker v. Board of Commissioners for Educational Lands & Funds, 141 Neb. 172, 3 N.W.2d 196 (1942).

Act providing for payment out of state school funds of tuition of children whose parent is in military service of United States, stationed in Nebraska, was void. Taylor v. School Dist. of City of Lincoln, 128 Neb. 437, 259 N.W. 168 (1935).

State school fund is a trust fund and can be used only for purposes specified. Taylor v. School Dist. of City of Lincoln, 128 Neb. 437, 259 N.W. 168 (1935).

Saline lands granted to state by United States are not included in educational lands. Chicago, B. & Q. R. R. Co. v. Neville, 102 Neb. 817, 170 N.W. 176 (1918).

Funds derived from certain grants for specified purposes cannot be converted to General Fund of the state. Olive v. School District No. 1, 86 Neb. 135, 125 N.W. 141 (1910); State ex rel. Ledwith v. Brian, 84 Neb. 30, 120 N.W. 916 (1909); State ex rel. McKenzie v. McBride, 5 Neb. 102 (1876); McMurtry v. Engelhardt, 5 Neb. Unof. 271, 98 N.W. 40 (1904).

All lands, money or other property bequeathed, or in any manner conveyed to state for educational purposes, shall be used and expended in accord with terms of grant and cannot be diverted to general fund or other uses. State ex rel. Ledwith v. Brian, 84 Neb. 30, 120 N.W. 916 (1909).

**2. Miscellaneous**

Constitutionality of a retroactive statute generally depends upon reasonableness. Relevant factors to consider are the nature and strength of the public interest, the extent of modification of the asserted pre-enactment right, and the nature of the right altered by the statute. Hiddleston v. Nebraska Jewish Education Soc., 186 Neb. 786, 186 N.W.2d 904 (1971).

Law having for its object diversion of any funds raised by taxation for school purposes to different purpose is unconstitutional and void. State ex rel. Ahern v. Walsh, 31 Neb. 469, 48 N.W. 263 (1891).

In proceedings by United States to condemn state school lands, measure of compensation is the fair market value of the property in fee, irrespective of number and kind of interests existing therein. State of Nebraska v. United States, 164 F.2d 866 (8th Cir. 1947).

## VII-10. University of Nebraska; government; Board of Regents; election; student membership; terms.

The general government of the University of Nebraska shall, under the direction of the Legislature, be vested in a board of not less than six nor more than eight regents to be designated the Board of Regents of the University of Nebraska, who shall be elected from and by districts as herein provided and three students of the University of Nebraska who shall serve as nonvoting members. Such nonvoting student members shall consist of the student body president of the University of Nebraska at Lincoln, the student body president of the University of Nebraska at Omaha, and the student body president of the University of Nebraska Medical Center. The terms of office of elected members shall be for six years each. The terms of office of student members shall be for the period of service as student body president. Their duties and powers shall be prescribed by law; and they shall receive no compensation, but may be reimbursed their actual expenses incurred in the discharge of their duties.

The Legislature shall divide the state, along county lines, into as many compact regent districts, as there are regents provided by the Legislature, of approximately equal population, which shall be numbered consecutively.

The Legislature shall redistrict the state after each federal decennial census. Such districts shall not be changed except upon the concurrence of a majority of the members of the Legislature. In any such redistricting, county lines shall be followed whenever practicable, but other established lines may be followed at the discretion of the Legislature. Whenever the state is so redistricted the members elected

prior to the redistricting shall continue in office, and the law providing for such redistricting shall where necessary specify the newly established district which they shall represent for the balance of their term.

**Source:**Neb. Const. art. VIII, sec. 10 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 22; Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 10; Amended 1968, Laws 1967, c. 320, sec. 1, p. 853; Amended 1974, Laws 1974, LB 323, sec. 1.

**Annotation**

This section requires the Legislature to vest the general government of the University in the Board of Regents. Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977).

Government of University of Nebraska is vested in the Board of Regents, subject to direction of the Legislature. Board of Regents v. County of Lancaster, 154 Neb. 398, 48 N.W.2d 221 (1951).

This section does not prohibit Legislature from imposing new duties on regents, or from requiring them to establish and conduct hog-cholera serum plant. Fisher v. Board of Regents of University of Nebraska, 108 Neb. 666, 189 N.W. 161 (1922).

Legislature in 1869, in accordance with this section, established the University of Nebraska, and provided the general powers of Board of Regents. Stewart v. Barton, 91 Neb. 96, 135 N.W. 381 (1912).

It was the duty of Board of Regents to establish experimental substations as directed by Legislature. State ex rel. Bushee v. Whitmore, 85 Neb. 566, 123 N.W. 1051 (1909).

This Article and section 85-105, R.R.S.1943, do not grant power to waive immunity from suit in federal court. Board of Regents of University of Nebraska v. Dawes, 370 F.Supp. 1190 (D. Neb. 1974).

**VII-11. Appropriation of public funds; handicapped children; sectarian instruction; religious test of teacher or student.**

Notwithstanding any other provision in the Constitution, appropriation of public funds shall not be made to any school or institution of learning not owned or exclusively controlled by the state or a political subdivision thereof; *Provided,* that the Legislature may provide that the state or any political subdivision thereof may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide for educational or other services for the benefit of children under the age of twenty-one years who are handicapped, as that term is from time to time defined by the Legislature, if such services are nonsectarian in nature.

All public schools shall be free of sectarian instruction.

The state shall not accept money or property to be used for sectarian purposes; *Provided,* that the Legislature may provide that the state may receive money from the federal government and distribute it in accordance with the terms of any such federal grants, but no public funds of the state, any political subdivision, or any public corporation may be added thereto.

A religious test or qualification shall not be required of any teacher or student for admission or continuance in any school or institution supported in whole or in part by public funds or taxation.

**Source:**Neb. Const. art. VIII, sec. 11 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 23; Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 11; Amended 1972, Laws 1971, LB 656, sec. 1; Amended 1976, Laws 1976, LB 666, sec. 1. **Note:** Pursuant to Cunningham v. Exon, 207 Neb. 513, 300 N.W.2d 6 (1980), the third paragraph in this section has been reinstated.

**Annotation**

**1. Grant of public funds**
**2. Constitutionality of certain practices**
**3. Miscellaneous**

**1. Grant of public funds**

The provisions of section 79-487 authorizing the transportation of nonprofit private school students on public school buses do not violate the provisions of this section in that they do not appropriate public funds to a nonpublic institution. State ex rel. Bouc v. School Dist. of City of Lincoln, 211 Neb. 731, 320 N.W.2d 472 (1982).

No appropriation or grant of public funds or property shall be made to any educational institution which is not owned and controlled by the state or a governmental subdivision thereof. Gaffney v. State Department of Education, 192 Neb. 358, 220 N.W.2d 550 (1974).

**2. Constitutionality of certain practices**

An act which indirectly benefits private institutions through public grants to students is unconstitutional. State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).

It is not unconstitutional for a public school district to lease classrooms in a church or other sectarian building if the classrooms are under the control and operation of the public school authorities and the instruction offered is nonsectarian. State ex rel. School Dist. of Hartington v. State Board of Education, 188 Neb. 1, 195 N.W.2d 161 (1972).

Reading from Bible, singing of hymns and offering prayer, in accordance with doctrines of religious organizations, is prohibited in public schools by this section. State ex rel. Freeman v. Scheve, 65 Neb. 853, 91 N.W. 846 (1902), judgment adhered to 65 Neb. 876, 93 N.W. 169 (1903).

**3. Miscellaneous**

The age of twenty-one years is reached upon a person's twenty-first birthday, and, therefore, the term "under the age of twenty-one years" excludes any persons who have reached their twenty-first birthday. Monahan v. School Dist. No. 1 of Douglas County, 229 Neb. 139, 425 N.W.2d 624 (1988).

This section does not prohibit the State from doing business or contracting with private institutions in fulfilling a governmental duty and furthering a public purpose. State ex rel. Creighton Univ. v. Smith, 217 Neb. 682, 353 N.W.2d 267 (1984).

Adoption of 1976 amendment to allow for state contracting with institutions not wholly owned or controlled by the state or any political subdivision for nonsectarian services for handicapped children did not repeal third full paragraph of original section 11, which forbids state to match federal grants to nonpublic institutions with public money. Cunningham v. Exon, 207 Neb. 513, 300 N.W.2d 6 (1980).

A citizen taxpayer has standing to maintain an action for a declaratory judgment to challenge the accuracy and validity of the proclamation, publication, and incorporation of an amendment to this Article and section of the Constitution of Nebraska. Cunningham v. Exon, 202 Neb. 563, 276 N.W.2d 213 (1979).

Legislature cannot authorize donations by public corporations for religious or charitable purposes. United Community Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

Section is applicable to school in part sectarian. State ex rel. Public School Dist. No. 6, Cedar County v. Taylor, 122 Neb. 454, 240 N.W. 573 (1932).

**VII-12. Education and reform of minors.**

The Legislature may provide by law for the establishment of a school or schools for the safe keeping, education, employment and reformation of all children under the age of eighteen years, who, for want of proper parental care, or other cause, are growing up in mendicancy or crime.

**Source:**Neb. Const. art. VIII, sec. 12 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 24; Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 12.

**Annotation**

Establishment of Boys' Training School is authorized by this section. Lingo v. Hann, 161 Neb. 67, 71 N.W.2d 716 (1955).

Juvenile courts do not have the sole or exclusive jurisdiction of children under eighteen years of age who have violated the law. State v. McCoy, 145 Neb. 750, 18 N.W.2d 101 (1945).

Under former section Legislature was without power to authorize commitment to state industrial school of children over sixteen who had not been convicted of crime. Scott v. Flowers, 61 Neb. 620, 85 N.W. 857 (1901), reversing 60 Neb. 675, 84 N.W. 81 (1900).

**VII-13. State colleges; government; board; name; selection; duties; compensation.**

The general government of the state colleges as now existing, and such other state colleges as may be established by law, shall be vested, under the direction of the Legislature, in a board of seven members to be styled as designated by the Legislature, six of whom shall be appointed by the Governor, with the advice and consent of the Legislature, two each for a term of two, four, and six years, and two each biennium thereafter for a term of six years, and the Commissioner of Education shall be a member ex officio. The duties and powers of the board shall be prescribed by law, and the members thereof shall receive no compensation for the performance of their duties, but may be reimbursed their actual expenses incurred therein.

**Source:**Neb. Const. art. VIII, sec. 13 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 25; Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 13; Amended 1952, Laws 1951, c. 164, sec. 2(4), p. 646; Amended 1968, Laws 1967, c. 315, sec. 1, p. 845.

**Annotation**

Board of Education of State Normal Schools was established in 1920. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

Teacher, head of department in state normal school, dismissed by president without action by board, is entitled to test, by quo warranto, the right of teacher employed to take his place. Eason v. Majors, 111 Neb. 288, 196 N.W. 133 (1923).

Upon showing that college administrative body acted from honest conviction upon belief facts showed it was for best interests of the school, and there was no showing that act was arbitrary or generated by ill will, fraud, coercion, or other such motives, court will not interfere. Levitt v. Board of Trustees of Nebraska State Colleges, 376 F.Supp. 945 (D. Neb. 1974).

## VII-14. Coordinating Commission for Postsecondary Education; membership; powers and duties; coordination, defined.

On January 1, 1992, there shall be established the Coordinating Commission for Postsecondary Education which shall, under the direction of the Legislature, be vested with the authority for the coordination of public postsecondary educational institutions. Public postsecondary educational institutions shall include each postsecondary educational campus or institution which is governed by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, any board or boards established for the community colleges, or any other governing board for any other public postsecondary educational institution which may be established by the Legislature.

Coordination shall mean:

(1) Authority to adopt, and revise as needed, a comprehensive statewide plan for postsecondary education which shall include (a) definitions of the role and mission of each public postsecondary educational institution within any general assignments of role and mission as may be prescribed by the Legislature and (b) plans for facilities which utilize tax funds designated by the Legislature;

(2) Authority to review, monitor, and approve or disapprove each public postsecondary educational institution's programs and capital construction projects which utilize tax funds designated by the Legislature in order to provide compliance and consistency with the comprehensive plan and to prevent unnecessary duplication; and

(3) Authority to review and modify, if needed to promote compliance and consistency with the comprehensive statewide plan and prevent unnecessary duplication, the budget requests of the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, any board or boards established for the community colleges, or any other governing board for any other public postsecondary educational institution which may be established by the Legislature.

The Legislature may provide the commission with additional powers and duties related to postsecondary education as long as such powers and duties do not invade the governance and management authority of the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges as provided in the Constitution of Nebraska, Article VII, sections 10 and 13. The Legislature may provide that coordination of the community colleges by the commission pursuant to this section may be conducted through a board or association representing all the community colleges.

Nothing in this section providing for statewide coordination shall limit or require the use of property

tax revenue by and for community colleges.

The commission shall consist of eleven members, residents of the state or the districts for which appointed, who shall be appointed by the Governor with the approval of a majority of the Legislature. Six of the members shall be chosen from six districts of approximately equal population and five shall be chosen on a statewide basis.

The terms of the members of the commission shall be six years or until a successor is qualified and takes office, except that of the members initially appointed, four members shall serve for terms of two years and four members shall serve for terms of four years. The members of the commission shall receive no compensation for the performance of their duties but may be reimbursed their actual and necessary expenses.

**Source:**Neb. Const. art. VII, sec. 14 (1990); Adopted 1990, Laws 1990, LB 1141, sec. 1.

**VII-15. Omitted.**
**Source:Note:** Article VII, section 15, of the Constitution of Nebraska, as adopted in 1992 by Initiative 407, has been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 245 Neb. 907, 515 N.W.2d 788 (1994).**Note:** Article VII, section 15, of the Constitution of Nebraska, as adopted in 1992 by Initiative 408, has been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

**VII-16. Repealed 1972. Laws 1972, LB 1023, sec. 1.**

**VII-17. Repealed 1972. Laws 1972, LB 1023, sec. 1.**

**VIII-1. Revenue; raised by taxation; legislative powers.**

The necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the Legislature may direct. Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 4, of this Constitution or any other provision of this Constitution to the contrary: (1) Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution; (2) tangible personal property, as defined by the Legislature, not exempted by this Constitution or by legislation, shall all be taxed at depreciated cost using the same depreciation method with reasonable class lives, as determined by the Legislature, or shall all be taxed by valuation uniformly and proportionately; (3) the Legislature may provide for a different method of taxing motor vehicles and may also establish a separate class of motor vehicles consisting of those owned and held for resale by motor vehicle dealers which shall be taxed in the manner and to the extent provided by the Legislature and may also establish a separate class for trucks, trailers, semitrailers, truck-tractors, or combinations thereof, consisting of those owned by residents and nonresidents of this state, and operating in interstate commerce, and may provide reciprocal and proportionate taxation of such vehicles. The tax proceeds from motor vehicles taxed in each county shall be allocated to the county and the cities, villages, and school districts of such county; (4) the Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all property within the class of agricultural land and horticultural land; (5) the

Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses; (6) the Legislature may prescribe standards and methods for the determination of the value of real property at uniform and proportionate values; (7) in furtherance of the purposes for which such a law of the United States has been adopted, whenever there exists a law of the United States which is intended to protect a specifically designated type, use, user, or owner of property or franchise from discriminatory state or local taxation, such property or franchise shall constitute a separate class of property or franchise under the laws of the State of Nebraska, and such property or franchise may not be taken into consideration in determining whether taxes are levied by valuation uniformly or proportionately upon any property or franchise, and the Legislature may enact laws which statutorily recognize such class and which tax or exempt from taxation such class of property or franchise in such manner as it determines; and (8) the Legislature may provide that livestock shall constitute a separate and distinct class of property for purposes of taxation and may further provide for reciprocal and proportionate taxation of livestock located in this state for only part of a year. Each actual property tax rate levied for a governmental subdivision shall be the same for all classes of taxed property and franchises. Taxes uniform as to class of property or the ownership or use thereof may be levied by valuation or otherwise upon classes of intangible property as the Legislature may determine, and such intangible property held in trust or otherwise for the purpose of funding pension, profit-sharing, or other employee benefit plans as defined by the Legislature may be declared exempt from taxation. Taxes other than property taxes may be authorized by law. Existing revenue laws shall continue in effect until changed by the Legislature.

**Source:**Neb. Const. art. IX, sec. 1 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 26; Transferred by Constitutional Convention, 1919-1920, art. VIII, sec. 1; Amended 1952, Laws 1951, c. 160, sec. 1, p. 636; Amended 1954, Laws 1954, Sixty-sixth Extraordinary Session, c. 3, sec. 1, p. 61; Amended 1960, Laws 1959, c. 238, sec. 1, p. 823; Amended 1964, Laws 1963, c. 298, sec. 1, p. 887; Amended 1964, Laws 1963, c. 301, sec. 1, p. 892; Amended 1972, Laws 1972, LB 837, sec. 1;Amended 1978, Laws 1978, First Spec. Sess., LR 1, sec. 1; Amended 1984, Laws 1984, First Spec. Sess., LR 7, sec. 1; Amended 1990, Laws 1989, LR 2, sec. 1; Amended 1992, Laws 1992, LR 219CA, sec. 1; Amended 1998, Laws 1998, LR 45CA, sec. 1.

**Annotation**



**1. Uniformity**

The object of the uniformity clause is accomplished if all the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value. No difference in the method of determining the valuation or rate of tax to be imposed can be allowed unless separate classifications rest on some reason of public policy or some substantial difference of situation or

circumstance that would naturally suggest justice or expediency of diverse legislation with respect to the objects to be classified. Evidence of "sales chasing" may justify differential treatment accorded to a particular county. County of Douglas v. Nebraska Tax Equal. & Rev. Comm., 262 Neb. 578, 635 N.W.2d 413 (2001).

The county violated the Nebraska Constitution's uniformity clause by its selective imposition of an increased value and assessment of the taxpayer's property containing mineral interests based solely on the ownership or control of the property. Lyman-Richey Corp. v. Cass Cty. Bd. of Equal., 258 Neb. 1003, 607 N.W.2d 806 (2000); Ash Grove Cement Co. v. Cass Cty. Bd. of Equal., 258 Neb. 990, 607 N.W.2d 810 (2000).

The constitutional requirement of uniformity extends to both rate and valuation. Real property taxes may not be equalized by merely classifying property and then arbitrarily applying a given value to all properties of that classification; the mere fact that a formula is devised, by which property is nonuniformly and disproportionately assessed, does not satisfy the constitutional requirement. The object of the uniformity clause is accomplished if all of the property within a taxing jurisdiction is assessed and taxed at a uniform value; differential tax treatment can only be based on the use or nature of the property, not upon who controls the property. Constructors, Inc. v. Cass Cty. Bd. of Equal., 258 Neb. 866, 606 N.W.2d 786 (2000).

The Class VI school system tax levy set forth in section 79-1078 (formerly section 79-438.13) does not violate this provision requiring uniform taxation. Swanson v. State, 249 Neb. 466, 544 N.W.2d 333 (1996).

A taxpayer who seeks a refund of taxes which are claimed to have been invalid as in violation of the constitutional provision requiring uniformity and proportionality in the taxation of tangible property is at most entitled to a refund of the difference between the taxes levied against the property and the taxes if all of the property treated as exempt had been placed on the rolls and taxed. Trailblazer Pipeline Co. v. Balka, 246 Neb. 221, 518 N.W.2d 646 (1994).

Real and personal property are in the same class for purposes of uniformity. A statute exempting all but a small sliver of personal property from the property tax rolls is unconstitutional under the uniformity clause because it improperly shifts the property tax burden to real property owners. Jaksha v. State, 241 Neb. 106, 486 N.W.2d 858 (1992).

Personal property and real property are both "tangible property" and must be equalized and taxed uniformly pursuant to this provision. MAPCO Ammonia Pipeline v. State Bd. of Equal., 238 Neb. 565, 471 N.W.2d 734 (1991).

It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization. AT&T Information Sys. v. State Bd. of Equal., 237 Neb. 591, 467 N.W.2d 55 (1991).

The taxation of personal property must be uniform not only to the rate of taxation, but to the valuation of property as well. Xerox Corp. v. Karnes, 217 Neb. 728, 350 N.W.2d 566 (1984).

The requirement that taxes be assessed uniformly and proportionately does not preclude the result that the property is assessed at less than actual value. Konicek v. Board of Equalization, 212 Neb. 648, 324 N.W.2d 815 (1982).

A mobile home as defined in section 60-1601.01 is not a motor vehicle within the exception to the constitutional provision providing for uniform and proportionate taxation of personal property. Gates v. Howell, 204 Neb. 256, 282 N.W.2d 22 (1979).

Under this section, the taxation of personal property, except as otherwise authorized herein, must be uniform both as to rate of taxation and valuation of property. State ex rel. Meyer v. Peters, 191 Neb. 330, 215 N.W.2d 520 (1974).

Free port law does not violate constitutional provisions for uniformity and against special privileges. Norden Laboratories, Inc. v. County Board of Equalization, 189 Neb. 437, 203 N.W.2d 152 (1973).

Harm caused by statute permitting independent hospital district to fractionate territory of counties insufficient to constitute violation of this section. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

It is the duty of the State Board of Equalization and Assessment to give effect to the requirement that all taxes be levied uniformly and proportionately upon all tangible property. Hanna v. State Board of Equalization & Assessment, 181 Neb. 725, 150 N.W.2d 878 (1967).

The Constitution requires taxes on all tangible property to be levied by valuation, uniformly and proportionately. H/K Company v. Board of Equalization, 175 Neb. 268, 121 N.W.2d 382 (1963).

Tax upon motor vehicle dealers violated rule of uniformity as to class and was unconstitutional. State ex rel. Meyer v. Story, 173 Neb. 741, 114 N.W.2d 769 (1962).

Rule of uniformity applies to valuation of railroad property. Union P. R. R. Co. v. State Bd. of Equal & Assess., 170 Neb. 139, 101 N.W.2d 892 (1960); Chicago & N. W. Ry. Co. v. State Bd. of Equal. & Assess., 170 Neb. 106, 101 N.W.2d 873 (1960); Chicago, B. & Q. R. R. Co. v. State Bd. of Equal. & Assess., 170 Neb. 77, 101 N.W.2d 856 (1960).

Taxes are required to be levied by valuation uniformly and proportionately upon all tangible property. United States Cold Storage Corp. v. Stolinski, 168 Neb. 513, 96 N.W.2d 408 (1959).

Taxes on tangible property must be levied by valuation uniformly and proportionately. K-K Appliance Co. v. Board of Equalization, 165 Neb. 547, 86 N.W.2d 381 (1957).

Substantial compliance as to value and uniformity is all that is required. LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W.2d 455 (1956).

Uniformity as to class is required of tax on intangible property. Omaha Nat. Bank v. Heintze, 159 Neb. 520, 67 N.W.2d 753 (1954).

One of objectives is to secure a uniform and proportionate valuation. County of Buffalo v. State

Board of Equalization & Assessment, 158 Neb. 353, 63 N.W.2d 468 (1954).

Uniform and proportionate valuation of farm lands is required. Laflin v. State Board of Equalization and Assessment, 156 Neb. 427, 56 N.W.2d 469 (1953).

Blanket Mill Tax Levy Act did not operate uniformly and proportionately, and was unconstitutional. Peterson v. Hancock, 155 Neb. 801, 54 N.W.2d 85 (1952).

Tax Appraisal Board Act did not change uniformity requirements as to taxation of property and therefore did not violate this section. Midwest Popcorn Co. v. Johnson, 152 Neb. 867, 43 N.W.2d 174 (1950).

Taxes must be levied by valuation uniformly and proportionately upon all tangible property, and providing different method for fixing the actual value of real estate than that prescribed for other tangible property violates this section. Homan v. Board of Equalization, 141 Neb. 400, 3 N.W.2d 650 (1942).

Act imposing annual tax on fire insurance companies based on gross premium receipts collected on policies of fire insurance on property located within corporate limits of cities or villages did not violate constitutional requirements of equality and uniformity. Continental Ins. Co. v. Smrha, 131 Neb. 791, 270 N.W. 122 (1936).

State authorizing tax levy on stock of banks was invalid as violating rule of uniformity as to class. State ex rel. Spillman v. Ord State Bank, 117 Neb. 189, 220 N.W. 265 (1928); Central Nat. Bank of Lincoln v. Sutherland, 113 Neb. 126, 202 N.W. 428 (1925); State Bank of Omaha v. Endres, 109 Neb. 753, 192 N.W. 322 (1923).

Assessment reasonably uniform and proportionate on all classes of property will not be set aside because all property is not assessed at actual value. Chicago, R. I & P. Ry. Co. v. State, 111 Neb. 362, 197 N.W. 114 (1923).

Rule of uniformity, applied to taxation of mortgages and of shares of stock in domestic corporations, inhibits discrimination between taxpayers in any manner. City Trust Co. of Omaha v. Douglas County, 101 Neb. 792, 165 N.W. 155 (1917).

Uniformity and equality in value of property of individuals and corporations is required. State ex rel. Breckenridge v. Fleming, 70 Neb. 529, 97 N.W. 1063 (1903).

Requirement of uniformity is accomplished if all the property within the taxing jurisdiction is assessed at uniform standard of value as compared with actual market value. State ex rel. Bee Building Co. v. Savage, 65 Neb. 714, 91 N.W. 716 (1902).

This provision is command to Legislature to so enact laws that every person shall pay tax in proportion to value of his property. Scott v. Flowers, 60 Neb. 675, 84 N.W. 81 (1900); State ex rel. Sioux County v. Tucker, 38 Neb. 56, 56 N.W. 718 (1893).

Uniformity is satisfied if observed by each jurisdiction imposing tax. State ex rel. Young v. Osborn, 60 Neb. 415, 83 N.W. 357 (1900).

This section requires that both valuation of property and rate of levy be uniform in taxing district. High School District No. 137, Havelock v. Lancaster County, 60 Neb. 147, 82 N.W. 380 (1900); State ex rel. Ahern v. Walsh, 31 Neb. 469, 48 N.W. 263 (1891).

There must be uniformity as to persons or property within district for which tax is imposed. Clother v. Maher, 15 Neb. 1, 16 N.W. 902 (1883).

This provision and section 77-1501, read together, require a county board of equalization to ultimately value comparable properties similarly, even where separate protests are heard in the first instance by referees who recommend greatly disparate property valuations. Zabawa v. Douglas Cty. Bd. of Equal., 17 Neb. App. 221, 757 N.W.2d 522 (2008).

This provision requires uniform and proportionate assessment within the class of agricultural land; agricultural land is then divided into — such as irrigated cropland, dry cropland, and grassland. Schmidt v. Thayer Cty. Bd. of Equal., 10 Neb. App. 10, 624 N.W.2d 63 (2001).

**2. Valuation**

If the State Board of Equalization and Assessment arbitrarily undervalues a particular class of centrally assessed property, so that another class of such property is valued disproportionately higher, the valuation of the latter class of property must be lowered so that it will be equalized with the other property. Natural Gas Pipeline Co. v. State Bd. of Equal., 237 Neb. 357, 466 N.W.2d 461 (1991).

This section requires that taxes upon tangible property shall be levied by valuation uniformly and proportionately. Lincoln Tel. & Tel. Co. v. County Board of Equalization, 209 Neb. 465, 308 N.W.2d 515 (1981).

Act which fixed value of agricultural income-producing machinery and equipment as those used by taxpayer in determining federal income tax violated this section. State ex rel. Meyer v. McNeil, 185 Neb. 586, 177 N.W.2d 596 (1970).

Legislature may prescribe standards and methods of determining value of tangible property for taxation. Carpenter v. State Board of Equalization & Assessment, 178 Neb. 611, 134 N.W.2d 272 (1965).

Assessment of too high a tax does not make it void, and taxpayer should first apply to Board of Equalization for relief. Power v. Jones, 126 Neb. 529, 253 N.W. 867 (1934).

Legislature may tax intangible property by valuation, uniformly, and without proportionate rates. Sommerville v. Board of County Comrs., 116 Neb. 282, 216 N.W. 815 (1927), affirmed on rehearing, 117 Neb. 507, 221 N.W. 433 (1928).

Legislature may fix basis of valuation for taxation. Beadle v. Sanders, 104 Neb. 427, 177 N.W. 789 (1920).

Constitutional provision for levying tax by valuation is not self-executing, and requires legislation to carry it into effect. Failure to provide method of valuing life insurance policies prevents their taxation. Laub v. Furnas County, 104 Neb. 402, 177 N.W. 749 (1920).

Taxpayer whose property alone is taxed at actual value is entitled to have his assessment reduced to the percentage of that value at which others are taxed. Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923).

**3. Classification**

A legislative classification must operate uniformly on all within a class which is reasonable. Natural Gas Pipeline Co. v. State Bd. of Equal., 237 Neb. 357, 466 N.W.2d 461 (1991).

The Legislature may, for the purpose of legislating, classify persons, places, objects, or subjects, but such classification must rest upon some difference in situation or circumstance which, in reason, calls for distinctive legislation for the class. Natural Gas Pipeline Co. v. State Bd. of Equal., 237 Neb. 357, 466 N.W.2d 461 (1991).

Constitution flatly contradicts conclusion that real property taxes may be equalized if property classified in same values applied to same classifications. County of Gage v. State Board of Equalization & Assessment, 185 Neb. 749, 178 N.W.2d 759 (1970).

This section does not prohibit a graduated state income tax and specifically provides authorization for taxes other than property tax. Anderson v. Tiemann, 182 Neb. 393, 155 N.W.2d 322 (1967).

Business inventories and real estate are in the same class for purpose of taxation. Grainger Bros. Co. v. Board of Equalization, 180 Neb. 571, 144 N.W.2d 161 (1966).

Taxation on valuation of the capital stock of corporations is required to be uniform as to class. First Nat. Bank & Trust Co. of Lincoln v. County of Lancaster, 177 Neb. 390, 128 N.W.2d 820 (1964).

In classifying intangible property for taxation, there must be uniformity as to class. First Continental Nat. Bank & Trust Co. v. Davis, 172 Neb. 118, 108 N.W.2d 638 (1961).

Constitution recognizes that villages and cities are separate and distinct. Hueftle v. Eustis Cemetery Assn., 171 Neb. 293, 106 N.W.2d 400 (1960).

Separate listing and assessing of motor vehicles is authorized. Peterson v. Hancock, 166 Neb. 637, 90 N.W.2d 298 (1958).

Motor vehicles could be taxed as a separate class of tangible property. Boyd Motor Co. v. County of Box Butte, 159 Neb. 514, 67 N.W.2d 774 (1954).

State board was not required to treat ranch land as a separate class of property. County of Grant v. State Board of Equalization & Assessment, 158 Neb. 310, 63 N.W.2d 459 (1954).

Grain on hand in elevator was taxable in same manner as other tangible personal property. State v. T. W. Jones Grain Co., 156 Neb. 822, 58 N.W.2d 212 (1953).

Purpose of 1920 amendment was to provide for a separate classification of intangibles in order that this class of property might be dealt with separately, brought out of hiding and placed on the tax rolls. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620

(1945).

Legislature cannot define and tax as tangible property that which actually is intangible property. Moeller, McPherrin & Judd v. Smith, 127 Neb. 424, 255 N.W. 551 (1934).

Power of classification rests with the Legislature, and courts will not interfere therewith unless classification is artificial and baseless. Cunningham v. Douglas County, 104 Neb. 405, 177 N.W. 742 (1920).

Classification of persons dealing in grain as "grain brokers" for purpose of assessment and taxation, and taxing of "average capital" is not unconstitutional. Central Granaries Co. v. Lancaster County, 77 Neb. 319, 113 N.W. 199 (1907).

Different classes of property may be listed and valued by different modes and agencies. Western Union Telegraph Co. v. City of Omaha, 73 Neb. 527, 103 N.W. 84 (1905).

**4. Property taxes**

Raising of necessary revenue by taxation is one of duties of county board of equalization. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

Constitution permits mortgage interest in land to be taxed. Grand Lodge, Degree of Honor, A.O.U.W. of Nebraska v. Sarpy County, 99 Neb. 647, 157 N.W. 344 (1916).

Credits are by Constitution "property" and as such are to be taxed. Lancaster County v. McDonald, 73 Neb. 453, 103 N.W. 78 (1905).

Tax upon capital stock of corporation is in effect tax upon property and assets of company. State ex rel. Bee Building Co. v. Savage, 65 Neb. 714, 91 N.W. 716 (1902).

**5. Occupation taxes**

Occupation taxes on corporations are authorized by this section. Licking v. Hayes Lumber Co., 146 Neb. 240, 19 N.W.2d 148 (1945).

Power to levy excise tax for use of highways was delegated by the people to the Legislature. Rocky Mountain Lines v. Cochran, 140 Neb. 378, 299 N.W. 596 (1941).

Occupation tax upon light, heat and power companies, without sufficient basis for classification, is void as discriminatory. City of Lincoln v. Lincoln Gas & Elec. Light Co., 100 Neb. 182, 158 N.W. 962 (1916).

Occupation tax may be levied upon the privilege of transacting the business of telegraphy within a city. City of Grand Island v. Postal Telegraph Cable Co., 92 Neb. 253, 138 N.W. 169 (1912).

Enumeration of occupations which may be taxed does not exclude other like enumerations. Mercantile Incorporating Co. v. Junkin, 85 Neb. 561, 123 N.W. 1055 (1909).

Occupation tax of five per cent of earnings of street railway company for municipal purposes was sustained. Lincoln Traction Co. v. City of Lincoln, 84 Neb. 327, 121 N.W. 435 (1909).

Constitution permits classification of occupations but imposition of taxes for persons of each class must be uniform. Rosenbloom v. State, 64 Neb. 342, 89 N.W. 1053 (1902).

Enumeration of business upon which occupation or license tax may be imposed does not limit such tax to business named. City of York v. Chicago, B. & Q. R. Co., 56 Neb. 572, 76 N.W. 1065 (1898).

This section does not deprive cities of power, under general law, of imposing occupation tax for municipal purposes. City of York v. Chicago, B. & Q. R. Co., 56 Neb. 572, 76 N.W. 1065 (1898); Templeton v. City of Tekamah, 32 Neb. 542, 49 N.W. 373 (1891); Magneau v. Fremont, 30 Neb. 843, 47 N.W. 280 (1890).

**6. Excise and license taxes**

The requirement of this provision that all taxes must be levied by valuation upon all tangible property and franchises, does not apply to excise taxes. State v. Garza, 242 Neb. 573, 496 N.W.2d 448 (1993).

Per head tax on cattle sold was an excise tax, not a property tax, and as such was not required to be levied by valuation uniformly and proportionately. State v. Galyen, 221 Neb. 497, 378 N.W.2d 182 (1985).

The imposition of an excise tax need not be uniform and proportionate but may be imposed upon each transaction. State v. Galyen, 221 Neb. 497, 378 N.W.2d 182 (1985).

Act imposing excise tax on imitation butter was not uniform upon all members of the class. Thorin v. Burke, 146 Neb. 94, 18 N.W.2d 664 (1945).

A tax on gross premiums of foreign insurance companies is not a tax on property but an excise tax on the privilege of doing business in this state. State ex rel. Smrha v. General American Life Ins. Co., 132 Neb. 520, 272 N.W. 555 (1937).

Statute providing for license fee on sale of tobacco and cigarettes was not a revenue measure under this section, and was constitutional. Nash-Finch Co. v. Beal, 124 Neb. 835, 248 N.W. 374 (1933).

Gasoline tax is excise tax and power to levy same is granted by this section. Pantorium v. McLaughlin, 116 Neb. 61, 215 N.W. 798 (1927).

Oil inspection fees, in excess of expense of enforcement, are invalid hereunder. Century Oil Co. v. Department of Agriculture, 110 Neb. 100, 192 N.W. 958 (1923); State v. Standard Oil Co., 100 Neb. 826, 161 N.W. 537 (1917).

Gross receipts of corporation may be taxed as license to do business but not as property tax. Western Union Telegraph Co. v. City of Omaha, 73 Neb. 527, 103 N.W. 84 (1905).

**7. Tax on corporate franchises**

Taxes on corporate franchises must be by valuation and in proportion to value. Western Union Telegraph Co. v. City of Omaha, 73 Neb. 527, 103 N.W. 84 (1905).

Corporate franchises are regarded as property and must be valued and taxed as such. State ex rel. Breckenridge v. Fleming, 70 Neb. 523, 97 N.W. 1063 (1903).

In computing value of corporate franchise, corporate indebtedness should not be deducted. State ex rel. Shriver v. Karr, 64 Neb. 514, 90 N.W. 298 (1902).

**8. Tax on foreign corporations**

Tax on shares of stock of foreign corporation was constitutional. Rehkopf v. Board of Equalization, 180 Neb. 90, 141 N.W.2d 462 (1966).

Foreign insurance companies may be treated as single class and taxed at different rate from domestic companies, but no discrimination should be made in taxes on their property within state. Aachen & Munich Fire Insurance Co. v. City of Omaha, 72 Neb. 518, 101 N.W. 3 (1904).

This section does not prevent Legislature from imposing tax, in nature of license or occupation tax, upon foreign corporations regardless of property valuation. State v. Insurance Co. of North America, 71 Neb. 320, 99 N.W. 36 (1904), demurrer sustained 71 Neb. 335, 100 N.W. 405 (1904), rehearing denied 71 Neb. 341, 102 N.W. 1022 (1905), judgment sustained 71 Neb. 348, 106 N.W. 767 (1906); State ex rel. Breckenridge v. Fleming, 70 Neb. 523, 97 N.W. 1063 (1903).

**9. Special assessments**

An act of Legislature which exempts a railroad company from payment of special assessments on benefits received but does not exempt it from payment of any general tax does not contravene the Constitution. Hinman v. Temple, 133 Neb. 268, 274 N.W. 605 (1937).

This section has no application to assessments levied for local improvements. Erickson v. Nine Mile Irr. Dist., 109 Neb. 189, 190 N.W. 573 (1922).

This section relates to revenue for general state and municipal government only, and has no application to taxes or assessments for local improvements such as irrigation works. Bd. of Directors of Alfalfa Irr. Dist. v. Collins, 46 Neb. 411, 64 N.W. 1086 (1895).

**10. Exemption from taxation**

The partial exemption from taxation of classes of property specified in section 77-202.25, is not unreasonable, objectionable as discriminatory, or violative hereof. Stahmer v. State, 192 Neb. 63, 218 N.W.2d 893 (1974).

Revenue from sale of water and gas by metropolitan utilities district not taxes. Evans v. Metropolitan Utilities Dist., 187 Neb. 261, 188 N.W.2d 851 (1971).

Lessee's interest in housing project located on federal air base was taxable. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

Housing authority created by statute for slum clearance is a governmental subdivision and, as such, exempt from taxation. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

Legislature cannot release any corporation from payment of its proportion of taxes. State ex rel.

Cornell v. Poynter, 59 Neb. 417, 81 N.W. 431 (1899).

**11. Miscellaneous**

Sections 77-132 and 77-1359 do not violate this provision. Agena v. Lancaster Cty. Bd. of Equal., 276 Neb. 851, 758 N.W.2d 363 (2008).

This provision and section 6 provide that the Legislature can empower a city to tax, but article XI authorizes a city with a limitation of powers home rule charter to exercise that power to tax without first waiting for express delegation. Home Builders Assn. v. City of Lincoln, 271 Neb. 353, 711 N.W.2d 871 (2006).

This provision gives the Legislature two options with respect to tangible personal property: To tax the property on a depreciated cost basis using the same depreciation method with reasonable class lives or to tax all such property uniformly and proportionately. Pfizer Inc. v. Lancaster Cty. Bd. of Equal., 260 Neb. 265, 616 N.W.2d 326 (2000).

The proposed amendment to Article VIII, § 1 of the Nebraska Constitution adopted by the Legislature in Special Session in 1978 (LR 1) violates the equal protection clause of the 14th Amendment to the U.S. Constitution by creating nonuniform taxation and violates the due process clause of the 14th Amendment by failing to provide taxpayers with notice and an opportunity to be heard. It is therefore void. State ex rel. Douglas v. State Board of Equalization and Assessment, 205 Neb. 130, 286 N.W.2d 729 (1979).

Requiring registration of mobile homes and assessing a reasonable fee to defray cost of registration and inspection, if any, does not violate constitutional provision requiring uniform and proportionate taxation of personal property. Gates v. Howell, 204 Neb. 256, 282 N.W.2d 22 (1979).

The levying of taxes for accumulation of funds is within the constitutional provision that "necessary revenue" of the state and its governmental subdivisions be raised by taxation in such manner as the Legislature might direct. Banks v. Board of Education of Chase County, 202 Neb. 717, 277 N.W.2d 76 (1979).

Colonies of honey bees which were not in existence on January 1, which are brought into Nebraska from another state before July 1, are not subject to assessment in Nebraska where their progenitors were taxed for that year in another state. Knoefler Honey Farms v. County of Sherman, 196 Neb. 435, 243 N.W.2d 760 (1976).

Act establishing Court of Industrial Relations does not violate any constitutional provision and the standards for its guidance are adequate. Orleans Education Assn. v. School Dist. of Orleans, 193 Neb. 675, 229 N.W.2d 172 (1975).

L.B. 1003, Eighty-second Legislature, First Session, sections 23-2601 to 23-2612 does not contravene this section. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

The formula set out in sections 79-486 and 79-4,102 for determining rates for nonresident tuition does not violate sections 1 or 4 of this Article. Mann v. Wayne County Board of Equalization, 186 Neb. 752, 186 N.W.2d 729 (1971).

Act which fixed value of agricultural income-producing machinery and equipment as those used by taxpayer in determining federal income tax violated this section. State ex rel. Meyer v. McNeil, 185 Neb. 586, 177 N.W.2d 596 (1970).

Harm caused by statute permitting independent hospital district to fractionate territory of counties insufficient to constitute violation of this section. Shadbolt v. County of Cherry, 185 Neb. 208, 174 N.W.2d 733 (1970).

Act authorizing appointed members of school board to levy a tax of not exceeding two mills and to certify the same directly to county treasurer for collection does not constitute an unconstitutional delegation of the legislative power of taxation. Campbell v. Area Vocational Technical School No. 2, 183 Neb. 318, 159 N.W.2d 817 (1968).

This section does not prohibit a graduated state income tax and specifically provides authorization for taxes other than property tax. Anderson v. Tiemann, 182 Neb. 393, 155 N.W.2d 322 (1967).

Airport Authority Act did not violate this section. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

Amount deducted from salary of state employee for retirement fund is not a tax within the meaning of this section. Gossman v. State Employees Retirement System, 177 Neb. 326, 129 N.W.2d 97 (1964).

Amendment to Constitution in 1920 provided for a different method of taxing intangibles. Stephenson School Supply Co. v. County of Lancaster, 172 Neb. 453, 110 N.W.2d 41 (1961).

This section has no application to the imposition of a penalty for failure to return property for taxation. Creigh v. Larsen, 171 Neb. 317, 106 N.W.2d 187 (1960).

Tax on motor vehicles should be allocated in the same proportion that levy of each political subdivision bears to total levy for all political subdivisions in which motor vehicle has a taxable situs. State ex rel. School Dist. of Scottsbluff v. Ellis, 168 Neb. 166, 95 N.W.2d 538 (1959).

The Legislature may prescribe standards for determination of actual value. S. S. Kresge Co. v. Jensen, 164 Neb. 833, 83 N.W.2d 569 (1957).

Payment of general taxes for school purposes may not operate, directly or indirectly, to secure immunity from the payment of state or county taxes, in whole or in part. Schulz v. Dixon County, 134 Neb. 549, 279 N.W. 179 (1938), overruling Schmidt v. Saline County, 122 Neb. 56, 239 N.W. 203 (1931).

Act of Legislature waiving penalty for nonpayment of taxes is not forbidden by Constitution. Tukey v. Douglas County, 133 Neb. 732, 277 N.W. 57 (1938).

Act providing for payment of delinquent taxes in installments did not violate provisions of this section. Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317 (1936).

Party invoking statute may not raise question of its constitutionality. Sommerville v. Board of County Comrs. of Douglas County, 116 Neb. 282, 216 N.W. 815 (1927).

Regarded as a tax, provision imposing three hundred dollars assessment against building enjoined as liquor nuisance was in conflict with this section. State ex rel. McGuire v. Macfarland, 104 Neb. 42, 175 N.W. 663 (1919).

This section has no application to statute authorizing levy for university campus extension, as same relates to "corporate purposes" of municipality. Sinclair v. City of Lincoln, 101 Neb. 163, 162 N.W. 488 (1917).

Enumeration of subjects of taxation is not exclusive. Legislature has power to provide for taxation upon inheritances. In re Estate of Sanford, 90 Neb. 410, 133 N.W. 870 (1911).

Credits of a nonresident partnership engaged in business in Nebraska are subject to taxation. Clay, Robinson & Co. v. Douglas County, 88 Neb. 363, 129 N.W. 548 (1911).

Inheritance tax law sustained as tax upon right of succession of property and not tax upon property of estate. State ex rel. Slabaugh v. Vinsonhaler, 74 Neb. 675, 105 N.W. 472 (1905).

Word "property" includes all intangible property of whatever description including franchise, and all physical or tangible property, and same must be assessed at uniform value. State ex rel. Bee Building Co. v. Savage, 65 Neb. 714, 91 N.W. 716 (1902).

"Cedar Rust" law does not violate this section, as charging owner of infected trees with cost of destruction is not a tax, but an incident to practical accomplishment of police power compelling him to abate a nuisance. Upton v. Felton, 4 F.Supp. 585 (D. Neb. 1932).

**VIII-2. Exemption of property from taxation; classification.**

Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary: (1) The property of the state and its governmental subdivisions shall constitute a separate class of property and shall be exempt from taxation to the extent such property is used by the state or governmental subdivision for public purposes authorized to the state or governmental subdivision by this Constitution or the Legislature. To the extent such property is not used for the authorized public purposes, the Legislature may classify such property, exempt such classes, and impose or authorize some or all of such property to be subject to property taxes or payments in lieu of property taxes except as provided by law; (2) the Legislature by general law may classify and exempt from taxation property owned by and used exclusively for agricultural and horticultural societies and property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user; (3) household goods and personal effects, as defined by law, may be exempted from taxation in whole or in part, as may be provided by general law, and the Legislature may prescribe a formula for the determination of value of household goods and personal effects; (4) the Legislature by general law may provide that the increased value of land by reason of shade or ornamental trees planted along the highway shall not be taken into account in the assessment of such land; (5) the Legislature, by general law and upon any terms, conditions, and restrictions it prescribes, may provide that the increased value of real property resulting from improvements designed primarily

for energy conservation may be exempt from taxation; (6) the value of a home substantially contributed by the United States Department of Veterans Affairs for a paraplegic veteran or multiple amputee shall be exempt from taxation during the life of such veteran or until the death or remarriage of his or her surviving spouse; (7) the Legislature may exempt from an intangible property tax life insurance and life insurance annuity contracts and any payment connected therewith and any right to pension or retirement payments; (8) the Legislature may exempt inventory from taxation; (9) the Legislature may define and classify personal property in such manner as it sees fit, whether by type, use, user, or owner, and may exempt any such class or classes of property from taxation if such exemption is reasonable or may exempt all personal property from taxation; (10) no property shall be exempt from taxation except as permitted by or as provided in this Constitution; (11) the Legislature may by general law provide that a portion of the value of any residence actually occupied as a homestead by any classification of owners as determined by the Legislature shall be exempt from taxation; and (12) the Legislature may by general law, and upon any terms, conditions, and restrictions it prescribes, provide that the increased value of real property resulting from improvements designed primarily for the purpose of renovating, rehabilitating, or preserving historically significant real property may be, in whole or in part, exempt from taxation.

**Source:**Neb. Const. art. IX, sec. 2 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 27; Transferred by Constitutional Convention, 1919-1920, art. VIII, sec. 2; Amended 1954, Laws 1954, Sixty-sixth Extraordinary Session, c. 4, sec. 1, p. 63; Amended 1964, Laws 1963, c. 300, sec. 1, p. 890; Amended 1966, Laws 1965, c. 303, sec. 1, p. 854; Amended 1968, Laws 1967, c. 318, sec. 1, p. 850; Amended 1970, Laws 1969, c. 425, sec. 1, p. 1443; Amended 1980, Laws 1980, LB 740, sec. 1; Amended 1992, Laws 1992, LR 219CA, sec. 1; Amended 1998, Laws 1998, LR 45CA, sec. 3; Amended 2004, Laws 2003, LR 2CA, sec. 1.

**Annotation**

**1. Governmental subdivision property**
**2. Educational property**
**3. Religious or charitable purposes**
**4. Household goods and personal effects**
**5. Miscellaneous**

**1. Governmental subdivision property**

The statutes governing airports were not expressly or impliedly repealed by the passage of the 1998 constitutional amendment to this provision or subsection (1)(a) of section 77-202. Airports owned and operated by municipalities are exempt from taxation. City of York v. York Cty. Bd. of Equal., 266 Neb. 297, 664 N.W.2d 445 (2003).

Real property acquired by the city through enforcement of special assessment liens and offered for sale to the public at a price which does not exceed the delinquent special assessments and accrued interest is property that is used for a public purpose, and is therefore exempt from real estate taxation. City of Alliance v. Box Butte Cty. Bd. of Equal., 265 Neb. 262, 656 N.W.2d 439 (2003).

Under facts in this case improvements on Missouri River port and terminal area held to be owned by City of Omaha and not taxable. Sioux City & New Orleans Barge Lines, Inc. v. Board of Equalization, 186 Neb. 690, 185 N.W.2d 866 (1971).

Taxing open accounts due from school district is not a tax upon a governmental subdivision of the state. Stephenson School Supply Co. v. County of Lancaster, 172 Neb. 453, 110 N.W.2d 41

(1961).

Public corporation is not subject to taxation outside of scope of prohibition of this section unless power to tax is expressly conferred by Legislature. Consumers Public Power Dist. v. City of Lincoln, 168 Neb. 183, 95 N.W.2d 357 (1959).

A public power district is a governmental subdivision of the state. United Community Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

Leasehold of housing corporation was not exempt from taxation. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

Where school district acquired title to land before date taxes were levied, land was exempt from taxation. Madison County v. School Dist. No. 2 of Madison County, 148 Neb. 218, 27 N.W.2d 172 (1947).

Rightful ownership of property by a governmental subdivision is all that is required or necessary to extend to such property complete exemption and immunity from assessment and taxation. Platte Valley Public Power & Irr. Dist. v. County of Lincoln, 144 Neb. 584, 14 N.W.2d 202 (1944).

Dredge used by contractors in excavation of reservoir for public power and irrigation district, under conditional sale contract whereby contractors eventually become the owners, was not exempt from taxation. Minneapolis Dredging Co. v. Reikat, 141 Neb. 470, 3 N.W.2d 889 (1942).

Housing authority created by statute for slum clearance is a governmental subdivision and, as such, is exempt from taxation. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

Nebraska State Board of Agriculture is not a governmental agency and its property is not exempt from taxation as such. Crete Mills v. Nebraska State Board of Agriculture, 132 Neb. 244, 271 N.W. 684 (1937).

Tax on shares of stock of bank was required to be paid, even though bank was insolvent and in hands of receiver. Farmers State Bank of Belden v. Nelson, 116 Neb. 541, 218 N.W. 393 (1928).

City warrants are exempt as property or instrumentality of government of subdivision of state, though owned by private citizen. Droll v. Furnas County, 108 Neb. 85, 187 N.W. 876 (1922).

Municipal water plant which supplies water to inhabitants of city is exempt from general state and county taxes. City of Omaha v. Douglas County, 96 Neb. 865, 148 N.W. 938 (1914).

Municipal or other public property is not exempt from assessments for local improvements. Herman v. City of Omaha, 75 Neb. 489, 106 N.W. 593 (1906).

**2. Educational property**

Houses used by college for rental to faculty members were not exempt from taxation. Doane College v. County of Saline, 173 Neb. 8, 112 N.W.2d 248 (1961).

Property of college fraternity was not exempt from taxation. Iota Benefit Assn. v. County of Douglas, 165 Neb. 330, 85 N.W.2d 726 (1957).

Farm and dairy property used by college for school purposes was not taxable. Central Union Conference Assn. of College View v. Lancaster County, 109 Neb. 106, 189 N.W. 982 (1922).

Business colleges, in which common school education is given, are entitled to exemption of that portion of their property so used. Rohrbough v. Douglas County, 76 Neb. 679, 107 N.W. 1000 (1906).

**3. Religious or charitable purposes**

This section, providing for tax exemption of certain property, is not self-executing, but requires action by the Legislature to carry such constitutional provision into effect. Indian Hills Comm. Ch. v. County Bd. of Equal., 226 Neb. 510, 412 N.W.2d 459 (1987).

Where a nursing home's association with two other companies did not result in financial gain or profit to either the owner or user, and the primary or dominant use of the nursing home continued to be for religious or charitable purposes, the property remains exempt from taxation. Bethesda Foundation v. County of Saunders, 200 Neb. 574, 264 N.W.2d 664 (1978).

A home for retired teachers under the facts in this case held not to be exempt from taxation. OEA Senior Citizens, Inc. v. County of Douglas, 186 Neb. 593, 185 N.W.2d 464 (1971).

Property owned and used exclusively for religious or charitable purposes and not owned or used for financial gain or profit is exempt from taxation. Christian Retirement Homes, Inc. v. Board of Equalization, 186 Neb. 11, 180 N.W.2d 136 (1970).

Property of rest home was exempt from taxation under this section. Evangelical Lutheran Good Samaritan Soc. v. County Board of Gage County, 181 Neb. 831, 151 N.W.2d 446 (1967).

Legislature is empowered to exempt from taxation property owned and used exclusively for religious and charitable purposes. Young Women's Christian Assn. v. City of Lincoln, 177 Neb. 136, 128 N.W. 2d 600 (1964).

Property owned and used primarily for furnishing of low-rent housing is not exempt as being owned and used exclusively for charitable purposes. County of Douglas v. OEA Senior Citizens, Inc., 172 Neb. 696, 111 N.W.2d 719 (1961).

Property of religious institution where used exclusively for religious and educational purposes was exempt from taxation. Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958).

Property of hospital owned and used exclusively for charitable purposes is exempt. Muller v. Nebraska Methodist Hospital, 160 Neb. 279, 70 N.W.2d 86 (1955).

Property used exclusively for charitable purposes was exempt from assessment for street improvements. Hanson v. City of Omaha, 154 Neb. 72, 46 N.W.2d 896 (1951).

A tax on exempt property is void and where it is levied on property as a whole, part of which is exempt and part not, the assessment, if inseparable, is unauthorized and the whole tax is void. McDonald v. Masonic Temple Craft, 135 Neb. 48, 280 N.W. 275 (1938).

The power of a city under Home Rule Charter to assess and levy taxes does not extend to property that is exempt from taxation by virtue of constitutional provision. East Lincoln Lodge No. 210, A.F. & A.M. v. City of Lincoln, 131 Neb. 379, 268 N.W. 91 (1936).

Where two lower floors of building owned by religious, charitable and educational institution were rented for commercial purposes and not exempt from taxation, but two upper floors were exempt, one half of taxable value of lot could be considered in determining total taxable value of property. Masonic Temple Craft v. Bd. of Equalization, Lincoln County, 129 Neb. 293, 261 N.W. 569 (1935).

Property used exclusively for lodge purposes by Masonic organization is exempt. Ancient & Accepted Scottish Rite v. Board of County Commissioners, 122 Neb. 586, 241 N.W. 93 (1932), overruling Scottish Rite Bldg. Co. v. Lancaster County, 106 Neb. 95, 182 N.W. 574 (1921), and Mt. Moriah Lodge, A.F. & A.M. v. Otoe County, 101 Neb. 274, 162 N.W. 639 (1917).

Laundry property owned by a charitable institution, used exclusively for charitable purposes, was exempt. House of the Good Shepherd v. Bd. of Equalization of Douglas County, 113 Neb. 489, 203 N.W. 632 (1925).

Hospital used exclusively for religious and charitable purposes is exempt. St. Elizabeth Hospital v. Lancaster County, 109 Neb. 104, 189 N.W. 981 (1922).

That part of Y.M.C.A. building actually and necessarily used for the general purposes of the association is exempt. Young Men's Christian Assn. of Lincoln v. Lancaster County, 106 Neb. 105, 182 N.W. 593 (1921).

Masonic home for care of old and enfeebled members was exempt from taxation. Plattsmouth Lodge, No. 6, A.F. & A.M. v. Cass County, 79 Neb. 463, 113 N.W. 167 (1907).

Abandoned church property is not exempt. Holthaus v. Adams County, 74 Neb. 861, 105 N.W. 632 (1905).

Property held with future intention to build thereon is not exempt. Y.M.C.A. of Omaha v. Douglas County, 60 Neb. 642, 83 N.W. 924 (1900).

Exemption of religious property is confined to church edifices and related property, and not to property to be so used in future. First Christian Church of Beatrice, NE v. City of Beatrice, 39 Neb. 432, 58 N.W. 166 (1894).

**4. Household goods and personal effects**

Household goods and personal effects as defined by law referred to extant law and fixtures are not included. State ex rel. Meyer v. Peters, 191 Neb. 330, 215 N.W.2d 520 (1974).

Provision exempting from taxation household goods of the value of $200 is a limitation upon the power to tax but does not exempt such property from sale for payment of taxes properly

assessed on other property not exempt from execution. Ryder v. Livingston, 145 Neb. 862, 18 N.W.2d 507 (1945).

**5. Miscellaneous**

In determining the validity of exemptions enacted under this section, a court must consider (1) whether the exemptions improperly shift the property tax burden to the remaining tax base and (2) whether there is a substantial difference of situation or circumstance justifying differing legislation for the objects classified. Jaksha v. State, 241 Neb. 106, 486 N.W.2d 858 (1992).

Stahmer v. State, 192 Neb. 63, 218 N.W.2d 893 (1974), holding that this provision prevails over the uniformity requirement of Neb. Const. art. VIII, section 1, is overruled. MAPCO Ammonia Pipeline v. State Bd. of Equal., 238 Neb. 565, 471 N.W.2d 734 (1991).

Requiring registration of mobile homes and assessing a reasonable fee to defray cost of registration and inspection, if any, does not violate constitutional provision requiring uniform and proportionate taxation of personal property. Gates v. Howell, 204 Neb. 256, 282 N.W.2d 22 (1979).

The partial exemption from taxation of classes of property specified in section 77-202.25, is not unreasonable, objectionable as discriminatory, or violative hereof. Stahmer v. State, 192 Neb. 63, 218 N.W.2d 893 (1974).

The primary or dominant use of property is controlling in determining whether property is exempt from taxation. Lincoln Woman's Club v. City of Lincoln, 178 Neb. 357, 133 N.W.2d 455 (1965).

Tax on gross income of profit-sharing trust violated this section. First Continental Nat. Bank & Trust Co. v. Davis, 172 Neb. 118, 108 N.W.2d 638 (1961).

Construction of legislative act would not be adopted that would operate to exempt property from taxation. Omaha Nat. Bank v. Jensen, 157 Neb. 22, 58 N.W.2d 582 (1953).

Status of exempt property is determined by date of levy, rather than date of assessment. American Province of Servants of Mary Real Estate Corp. v. County of Douglas, 147 Neb. 485, 23 N.W.2d 714 (1946).

Legislature was not authorized to exempt intangible property having situs in this state from taxation. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Legislature may exempt railroad company from payment of special assessments on benefits received. Hinman v. Temple, 133 Neb. 268, 274 N.W. 605 (1937).

Constitutional provision does not apply to gasoline tax. State v. Cheyenne County, 127 Neb. 619, 256 N.W. 67 (1934).

Parties to suit cannot stipulate as to law of case in taxation matters so as to bind the court. North Platte Lodge No. 985, B.P.O.E. v. Board of Equalization of Lincoln County, 125 Neb. 841, 252 N.W. 313 (1934).

The reason for exemption from taxation has no application to assessments for local improvements. Drainage District No. 1 of Richardson County v. Richardson County, 86 Neb. 355, 125 N.W. 796 (1910); Beatrice v. Brethren Church of Beatrice, 41 Neb. 358, 59 N.W. 932 (1894).

It is exclusive use of the property which determines its exemption character. Academy of the Sacred Heart v. Irey, 51 Neb. 755, 71 N.W. 752 (1897).

By the enabling act, federal government obligated state that no taxes should be imposed upon federal owned property. Leasehold interest of tenant on public land is not exempt. State ex rel. Sioux County v. Tucker, 38 Neb. 56, 56 N.W. 718 (1893).

**VIII-3. Redemption from sales of real estate for taxes.**

The right of redemption from all sales of real estate, for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate, for a period of not less than two years from such sales thereof. Provided, that occupants shall in all cases be served with personal notice before the time of redemption expires.

**Source:**Neb. Const. art. IX, sec. 3 (1875); Transferred by Constitutional Convention, 1919-1920, art. VIII, sec. 3.

**Annotation**

**1. Right of redemption**
**2. Personal notice**
**3. Miscellaneous**

**1. Right of redemption**

This provision is self-executing. County of Lancaster v. Schwarz, 153 Neb. 472, 45 N.W.2d 432 (1950).

This section is self-executing. No statute or decree is necessary to enforce it, or place it in operation. County of Douglas v. Christensen, 144 Neb. 899, 15 N.W.2d 53 (1944).

Owner of realty sold under decree foreclosing valid tax sale certificate, where foreclosure was commenced more than two years subsequent to issuance of tax sale certificate, is barred from the right of redemption on confirmation of judicial sale. Phelps County v. City of Holdrege, 133 Neb. 139, 274 N.W. 483 (1937).

Payment made to redeem to the county treasurer by the owner acts only in favor of the real estate and special assessments as shown by the county treasurer's books to be subject to redemption. Village of Winside v. Brune, 133 Neb. 80, 274 N.W. 212 (1937).

In a tax foreclosure proceeding by a county to recover delinquent taxes on land without making purchaser at a prior administrative sale a party, the purchaser at the foreclosure sale buys subject to the right of one having a valid lien upon the premises to redeem from such sale, and the one claiming a lien cannot be barred without a hearing. Smith v. Potter, 92 Neb. 39, 137 N.W. 854 (1912).

Two year period of redemption commences to run from confirmation of sale under decree, where foreclosure of lien was instituted prior to administrative sale. Bundy v. Wills, 88 Neb. 554, 130 N.W. 273 (1911).

The two years in which to redeem begins to run at date of sale under decree. Parsons v. Prudential Real Estate Co., 86 Neb. 271, 125 N.W. 521 (1910).

Right of redemption is secured not only to the owner but to any person interested in the land. Douglas v. Hayes County, 82 Neb. 577, 118 N.W. 114 (1908).

Redemption applies to judicial as well as administrative sales. Selby v. Pueppka, 73 Neb. 179, 102 N.W. 263 (1905).

Provision for redemption is self-executing and right exists without statutory provision or procedure. Lincoln Street Railway Co. v. City of Lincoln, 61 Neb. 109, 84 N.W. 802 (1901).

Where land of person under disability is sold for taxes, right to redeem extends to two years after disability removed. Leavitt v. Bell, 55 Neb. 57, 75 N.W. 524 (1898).

**2. Personal notice**

Personal notice is not required in sales under tax foreclosure. County of Lincoln v. Provident Loan & Investment Co., 147 Neb. 169, 22 N.W.2d 609 (1946).

Personal service of notice is not required to be made upon a party who might have claimed the right to actual possession or occupancy but never in fact exercised that right. Kuska v. Kubat, 147 Neb. 139, 22 N.W.2d 484 (1946).

Personal notice is required in all cases where a tax deed is sought, but is not required in sales under tax foreclosures. Connely v. Hesselberth, 132 Neb. 886, 273 N.W. 821 (1937).

Statute authorizing counties to foreclose liens for taxes delinquent more than three years is not violative hereof. Personal notice required hereby as to tax sales is not required in sales in tax foreclosure actions. Douglas County v. Barker Co., 125 Neb. 253, 249 N.W. 607 (1933); Commercial Savings & Loan Assn. v. Pyramid Realty Co., 121 Neb. 493, 237 N.W. 575 (1931).

Notice is required only when tax deed is sought but is not necessary in order to maintain action to enforce tax lien. Van Etten v. Medland, 53 Neb. 569, 74 N.W. 33 (1898).

Requirements for notice to owner is mandatory and applies to all tax sales after adoption of Constitution. Hendrix v. Boggs, 15 Neb. 469, 20 N.W. 28 (1884).

**3. Miscellaneous**

Provisions of scavenger tax law regarding objections to confirmation of sale was enacted to give owner of property sold for taxes the rights guaranteed to him hereunder. State v. Several Parcels of Land, 94 Neb. 431, 143 N.W. 471 (1913).

Sale of lands for taxes by judicial sale, without previous sale by county treasurer, is not forbidden by Constitution. Logan County v. Carnahan, 66 Neb. 685, 92 N.W. 984 (1902),

affirmed on rehearing 66 Neb. 693, 95 N.W. 812 (1903).

Legislature has no power to make tax deed conclusive evidence of jurisdictional facts. Thomsen v. Dickey, 42 Neb. 314, 60 N.W. 558 (1894); Larson v. Dickey, 39 Neb. 463, 58 N.W. 167 (1894).

**VIII-4. Legislature has no power to remit taxes; exception; cancellation of taxes on land acquired by the state.**

Except as to tax and assessment charges against real property remaining delinquent and unpaid for a period of fifteen years or longer, the Legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever; *Provided,* that the Legislature may provide by law for the payment or cancellation of taxes or assessments against real estate remaining unpaid against real estate owned or acquired by the state or its governmental subdivisions.

**Source:**Neb. Const. art. IX, sec. 4 (1875); Transferred by Constitutional Convention, 1919-1920, art. VIII, sec. 4; Amended 1958, Laws 1957, c. 214, sec. 1, p. 750; Amended 1966, Laws 1965, c. 299, sec. 1, p. 845.

**Annotation**

**1. Release or commutation**
**2. Redemption**
**3. Miscellaneous**

**1. Release or commutation**

The Class VI school system tax levy set forth in section 79-1078 (formerly section 79-438.13) does not result in the commutation of taxes and therefore does not violate this provision. Swanson v. State, 249 Neb. 466, 544 N.W.2d 333 (1996).

Although the Legislature is prohibited from changing the methods of payment of any tax once levied, a tax enacted and put into effect prior to the tax levy dates does not violate the constitutional proscription against commutation of a tax. Jaksha v. State, 241 Neb. 106, 486 N.W.2d 858 (1992).

Legislature does not have the power to release or discharge a tax. State ex rel. Meyer v. Story, 173 Neb. 741, 114 N.W.2d 769 (1962).

Prohibition against release of taxes had no application to receipt by county officers of money under court decree. State ex rel. Heintze v. County of Adams, 162 Neb. 127, 75 N.W.2d 539 (1956).

Blanket Mill Tax Levy Act operated to release and discharge taxes, and was unconstitutional. Peterson v. Hancock, 155 Neb. 801, 54 N.W.2d 85 (1952).

Where school district acquired title to land after tax became lien, lien could not be discharged without violating this section. Madison County v. School Dist. No. 2 of Madison County, 148

Neb. 218, 27 N.W.2d 172 (1947).

Intangible property of foreign corporation could not be released from taxation by Legislature. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Sale of land to satisfy a tax sale certificate thereon is an extinguishment of the lien for taxes, becomes merged in the title, and does not constitute a release or commutation of taxes. Lincoln County v. Shuman, 138 Neb. 84, 292 N.W. 30 (1940).

Statutory provision that holder of certificate of tax sale in scavenger suit may surrender it to the county treasurer with request for its cancellation and such cancellation shall have effect of redemption from tax sale, is not a provision for the release or commutation of taxes within the constitutional prohibition. Marker v. Scotts Bluff County, 137 Neb. 360, 289 N.W. 534 (1939).

Interest, penalties and costs imposed for nonpayment of taxes are no part of the tax and may be remitted by the Legislature. Tukey v. Douglas County, 133 Neb. 732, 277 N.W. 57 (1938).

Sheriff, making a sale under a distress warrant to collect unpaid personal taxes, is justified in refusing a bid so inadequate as to amount to commutation of taxes. Krug v. Hopkins, 132 Neb. 768, 273 N.W. 221 (1937).

Statute providing that, under certain conditions, delinquent real estate taxes may be paid in ten equal annual installments contravenes constitutional provision prohibiting commutation of taxes in any form whatever. Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317 (1936).

Free high school instruction act does not violate this section. Wilkinson v. Lord, 85 Neb. 136, 122 N.W. 699 (1909); High School Dist. No. 137, Havelock v. Lancaster County, 60 Neb. 147, 82 N.W. 380 (1900).

Section does not apply to special assessment for local improvement. City may release same by compromise. Farnham v. City of Lincoln, 75 Neb. 502, 106 N.W. 666 (1906).

No tax can be released by purchase of the land at eminent domain proceedings. State v. Missouri Pac. Ry. Co., 75 Neb. 4, 105 N.W. 983 (1905).

"Release" is extinguishment of debt. Sale of land for less than amount due is release within meaning of Constitution. Woodrough v. Douglas County, 71 Neb. 354, 98 N.W. 1092 (1904).

Statute attempting to exempt insurance companies from taxation is void. State ex rel. Cornell v. Poynter, 59 Neb. 417, 81 N.W. 431 (1899).

Taxes are perpetual lien on real estate and Legislature has no power to release any of same. County of Lancaster v. Trimble, 33 Neb. 121, 49 N.W. 938 (1891); Wood v. Helmer, 10 Neb. 65, 4 N.W. 968 (1880).

**2. Redemption**

Redemption from tax lien foreclosure cannot be made by paying amount of the bid, but only by paying full amount of taxes due with interest. City of Plattsmouth v. Hazzard, 132 Neb. 284, 271 N.W. 801 (1937).

Redemption from tax lien foreclosure by county may be made by owner or person interested only by paying full amount of taxes due with interest, not by paying only the amount bid at the sale. Commercial Savings & Loan Assn. v. Pyramid Realty Co., 121 Neb. 493, 237 N.W. 575 (1931).

On redemption owner must pay full amount of tax due. City of Beatrice v. Wright, 72 Neb. 689, 101 N.W. 1039 (1904).

**3. Miscellaneous**

A request for refund of invalid tax or one paid as a result of clerical error must be by a written claim upon which the county board acts quasi-judicially, and upon request for declaratory relief on ground resolution for refund was invalid, refusal thereof was within discretion of district court where there was no showing such claim had not been filed. Svoboda v. Hahn, 196 Neb. 21, 241 N.W.2d 499 (1976).

The partial exemption from taxation of classes of property specified in section 77-202.25, is not unreasonable, objectionable as discriminatory, or violative hereof. Stahmer v. State, 192 Neb. 63, 218 N.W.2d 893 (1974).

While a penalty is not a part of the tax, it does have some of the attributes of the tax at least with respect to its distribution. Misle v. Miller, 176 Neb. 113, 125 N.W.2d 512 (1963).

Housing authority created by statute for slum clearance is a governmental subdivision and, as such, is exempt from taxation. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

The state has an interest in the revenue of a county, and the Legislature may, for the public good, direct its application. City of Fremont v. Dodge County, 130 Neb. 856, 266 N.W. 771 (1936); City of Beatrice v. Gage County, 130 Neb. 850, 266 N.W. 777 (1936).

Lien for personal taxes against assets of an estate has priority over preferred claims in probate of estate. In re Estate of Badberg, 130 Neb. 216, 264 N.W. 467 (1936).

Priority of general taxes over special assessments is recognized by this section. Douglas County v. Shannon, 125 Neb. 783, 252 N.W. 199 (1934).

Banking authorities in control of state bank should pay taxes lawfully levied on bank's intangible property before depositors and creditors. Farmers State Bank of Belden v. Nelson, 116 Neb. 541, 218 N.W. 393 (1928).

Statute authorizing city to levy tax for university campus extension is for corporate purpose, and hence not violative of this section. Sinclair v. City of Lincoln, 101 Neb. 163, 162 N.W. 488 (1917).

**VIII-5. County taxes; limitation.**

County authorities shall never assess taxes the aggregate of which shall exceed fifty cents per one

hundred dollars of taxable value as determined by the assessment rolls, except for the payment of indebtedness existing at the adoption hereof, unless authorized by a vote of the people of the county.

**Source:**Neb. Const. art. IX, sec. 5 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 28; Transferred by Constitutional Convention, 1919-1920, art. VIII, sec. 5; Amended 1992, Laws 1992, LR 219CA, sec. 1.

**Annotation**

**1. Levy of taxes**
**2. Limitation on indebtedness**
**3. Miscellaneous**

**1. Levy of taxes**

Levy in excess of constitutional limit to pay courthouse bonds required vote of people. State ex rel. Shelley v. Board of County Commissioners, 156 Neb. 583, 57 N.W.2d 129 (1953).

This section is a limitation upon the power of county authorities to tax. Chicago, B. & Q. R. R. Co. v. County of Gosper, 153 Neb. 805, 46 N.W.2d 147 (1951).

Law authorizing tax which, with other taxes, did not exceed constitutional limitation, is not invalid. Cunningham v. Douglas County, 104 Neb. 405, 177 N.W. 742 (1920).

Amount levied in excess of limitation is void. Dakota County v. Chicago, St. Paul, Minn. & Omaha Ry. Co., 63 Neb. 405, 88 N.W. 663 (1902); Chicago, B. & Q. R. R. Co. v. Nemaha County, 50 Neb. 393, 69 N.W. 958 (1897).

This section is not a grant of power but a limitation and operates upon both the county and the Legislature. Grand Island & Wyoming Central R. R. Co. v. County of Dawes, 62 Neb. 44, 86 N.W. 934 (1901).

Taxes levied to pay judgment against the county should be included. Chase County v. Chicago, B. & Q. R. R. Co., 58 Neb. 274, 78 N.W. 502 (1899).

Section means that except for special reasons mentioned, county is without authority to levy a tax in excess of limitation for county purposes. Chicago, B. & Q. R. R. Co. v. Klein, 52 Neb. 258, 71 N.W. 1069 (1897).

Road district tax should be included in ascertaining the maximum tax limit for the county. Dixon County v. Chicago, St. Paul, Minn. & Omaha Ry. Co., 1 Neb. Unof. 240, 95 N.W. 340 (1901).

**2. Limitation on indebtedness**

Recovery quantum meruit cannot be permitted in an amount in excess of the debt limitation imposed by this section. Warren v. County of Stanton, 147 Neb. 32, 22 N.W.2d 287 (1946).

County authorities are prohibited from issuing warrants in any one year in excess of maximum amount that can be assessed as taxes. Warren v. Stanton County, 145 Neb. 220, 15 N.W.2d 757 (1944).

County cannot be required to expend more for poor relief than it can obtain by taxation under

constitutional limitations. State ex rel. Boxberger v. Burns, 132 Neb. 31, 270 N.W. 656 (1937).

Under the prohibition of this section the county cannot issue warrants in excess of limitation. In re House Roll 284, 31 Neb. 505, 48 N.W. 275 (1891).

**3. Miscellaneous**

Public building commission tax under section 23-2604, R.S.Supp.,1971, is not a county tax. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

Mother's Pension Act did not violate this section. Rumsey v. Saline County, 102 Neb. 302, 167 N.W. 66 (1918).

## VIII-6. Local improvements of cities, towns and villages.

The Legislature may vest the corporate authorities of cities, towns and villages, with power to make local improvements, including facilities for providing off-street parking for vehicles, by special assessments or by special taxation of property benefited, and to redetermine and reallocate from time to time the benefits arising from the acquisition of such off-street parking facilities, and the Legislature may vest the corporate authorities of cities and villages with power to levy special assessments for the maintenance, repair and reconstruction of such off-street parking facilities. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same, except that cities and villages may be empowered by the Legislature to assess and collect separate and additional taxes within off-street parking districts created by and within any city or village on such terms as the Legislature may prescribe.

**Source:**Neb. Const. art. IX, sec. 6 (1875); Transferred by Constitutional Convention, 1919-1920, art. VIII, sec. 6; Amended 1972, Laws 1972, LB 1429, sec. 1.

**Annotation**

**1. Special assessments**
**2. Occupation and license taxes**
**3. Miscellaneous**

**1. Special assessments**

Statute authorizing paving in city of the second class did not violate this section. Elliott v. City of Auburn, 172 Neb. 1, 108 N.W.2d 328 (1961).

Sewerage service charges are not special assessments for a general improvement. Michelson v. City of Grand Island, 154 Neb. 654, 48 N.W.2d 769 (1951).

Paving assessments in excess of present or reasonable prospective benefits are unauthorized. Munsell v. City of Hebron, 117 Neb. 251, 220 N.W. 289 (1928).

This section leaves mode of application of power to make local improvements to be provided for by legislation. Whitla v. Connor, 114 Neb. 526, 208 N.W. 670 (1926).

Act authorizing private individuals to create and fix boundaries for improvement district is void. Elliott v. Wille, 112 Neb. 86, 200 N.W. 347 (1924).

This section by implication limits assessments for local improvements to lots or tracts affected. Brown Real Estate Co. v. Lancaster County, 110 Neb. 665, 194 N.W. 897 (1923).

Sewage disposal plant is for benefit of entire city and statute authorizing cost to be paid by special assessment on property is unconstitutional. Hurd v. Sanitary Sewer Dist. No. 1 of Harvard, 109 Neb. 384, 191 N.W. 438 (1922).

Statute authorizing creation of paving districts by city council without petition of property owners is not unconstitutional. Fitzgerald v. Sattler, 102 Neb. 665, 168 N.W. 599 (1918).

To sustain special assessments, property taxed must lie within the improved district. McCaffrey v. City of Omaha, 91 Neb. 184, 135 N.W. 552 (1912).

The basis of special assessment is that value of property has been correspondingly increased, without which no such assessment can be levied. Schneider v. Plum, 86 Neb. 129, 124 N.W. 1132 (1910).

Constitution here recognizes distinction between assessment for special benefits and taxes for general revenue purposes. Farnham v. City of Lincoln, 75 Neb. 502, 106 N.W. 666 (1906); City of Beatrice v. Brethren Church of Beatrice, 41 Neb. 358, 59 N.W. 932 (1894).

Special assessments may be levied to defray the cost of opening street in city. Parrotte v. City of Omaha, 61 Neb. 96, 84 N.W. 602 (1900).

It is not necessary that property assessed shall be platted. Medland v. Linton, 60 Neb. 249, 82 N.W. 866 (1900).

Right of municipal corporation to levy assessments on property is express power resting alone on constitutional authority. Hurford v. City of Omaha, 4 Neb. 336 (1876).

**2. Occupation and license taxes**

Gearing license and occupation taxes to the area of occupancy and not weighing other considerations does not offend the requirement that such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same. Blackledge v. Richards, 194 Neb. 188, 231 N.W.2d 319 (1975).

Occupation tax need not be measured by profits from the business. It must, however, be reasonable. City of Grand Island v. Postal Telegraph Cable Co., 92 Neb. 253, 138 N.W. 169 (1912).

Occupation tax upon gross earnings of a business is authorized by this section. Lincoln Traction Co. v. City of Lincoln, 84 Neb. 327, 121 N.W. 435 (1909).

Legislature may delegate power to municipalities to tax foreign insurance companies. Aachen & Munich Fire Ins. Co. v. City of Omaha, 72 Neb. 518, 101 N.W. 3 (1904).

**3. Miscellaneous**

Section 1 and this provision provide that the Legislature can empower a city to tax, but article

XI authorizes a city with a limitation of powers home rule charter to exercise that power to tax without first waiting for express delegation. Home Builders Assn. v. City of Lincoln, 271 Neb. 353, 711 N.W.2d 871 (2006).

Act establishing Court of Industrial Relations does not violate any constitutional provision and the standards for its guidance are adequate. Orleans Education Assn. v. School Dist. of Orleans, 193 Neb. 675, 229 N.W.2d 172 (1975).

Ad valorem taxes must be uniform in respect to persons within the jurisdiction of the body imposing the tax. Lynch v. Howell, 165 Neb. 525, 86 N.W.2d 364 (1957).

Housing authority created by statute for slum clearance is a governmental subdivision and, as such, is exempt from taxation. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

Act permitting cities and villages to levy taxes for building of viaducts is valid. Hinman v. Temple, 133 Neb. 268, 274 N.W. 605 (1937).

Statute authorizing levy of tax for university campus extension is for benefit of city and "for corporate purposes." Sinclair v. City of Lincoln, 101 Neb. 163, 162 N.W. 488 (1917).

Power granted includes power to levy tax by counties to pay for drainage improvements. Drainage District No. 1, Richardson County v. Richardson County, 86 Neb. 355, 125 N.W. 796 (1910); Dodge County v. Acom, 61 Neb. 376, 85 N.W. 292 (1901); Darst v. Griffin, 31 Neb. 668, 48 N.W. 819 (1891).

Township is a municipal corporation within meaning of this section. Union Pac. R. R. Co. v. Howard County, 66 Neb. 663, 92 N.W. 579 (1902), reversed on rehearing 66 Neb. 667, 97 N.W. 280 (1903).

The rule of uniformity in municipal taxes is required by this section. State ex rel. Bee Building Co. v. Savage, 65 Neb. 714, 91 N.W. 716 (1902).

Municipal taxes need not be levied or collected in the same manner as state taxes. State ex rel. Prout v. Aitken, 62 Neb. 428, 87 N.W. 153 (1901).

This section authorized Legislature, not to levy tax for municipal purposes, but to authorize municipalities themselves to do so. City of York v. Chicago, B. & Q. R. R. Co., 56 Neb. 572, 76 N.W. 1065 (1898).

City has power to drain property to abate nuisance of stagnant water and assess cost to property, but not without notice to owner. Horbach v. City of Omaha, 54 Neb. 83, 74 N.W. 434 (1898).

Land annexed to municipality is not exempt from taxation for preexisting debts. Gottschalk v. Becher, 32 Neb. 653, 49 N.W. 715 (1891).

**VIII-7. Private property not liable for corporate debts; municipalities and inhabitants exempt for**

**corporate purposes.**

Private property shall not be liable to be taken or sold for the payment of the corporate debts of municipal corporations. The Legislature shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes.

**Source:**Neb. Const. art. IX, sec. 7 (1875); Transferred by Constitutional Convention, 1919-1920, art. VIII, sec. 7.

**Annotation**

**1. Tax for corporate purpose**
**2. Tax not for corporate purpose**
**3. Miscellaneous**

**1. Tax for corporate purpose**

The prohibition in this section applies only where the levy is for corporate or proprietary purposes and is not levied by local authority and therefore is not contravened by L.B. 1003, Eighty-second Legislature, First Session, sections 23-2601 to 23-2612. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

Creating liability against a village for benefits to streets and alleys for drainage improvements within a drainage district is not in contravention of this section. Drainage District No. 1 in Lincoln County v. Village of Hershey, 145 Neb. 138, 15 N.W.2d 337 (1944).

Law imposing tax for operation by city of water and gas plants is unconstitutional hereunder. Metropolitan Utilities Dist. v. City of Omaha, 112 Neb. 93, 198 N.W. 858 (1924).

City ordinance imposing charge for support of fire departments is void. German-American Fire Insurance Co. v. City of Minden, 51 Neb. 870, 71 N.W. 995 (1897). See also Aachen & Munich Fire Insurance Co. v. City of Omaha, 72 Neb. 518, 101 N.W. 3 (1904).

Act imposing charge upon fire insurance company for support of fire departments is tax for corporate purposes and void. State v. Wheeler, 33 Neb. 563, 50 N.W. 770 (1891).

**2. Tax not for corporate purpose**

Creation of housing authorities by statute for slum clearance does not contravene constitutional inhibitions. Lennox v. Housing Authority of City of Omaha, 137 Neb. 582, 290 N.W. 451 (1940).

Intangible tax law is not violative of provision against imposing taxes on municipalities for corporate purposes. Mehrens v. Greenleaf, 119 Neb. 82, 227 N.W. 325 (1929).

Law imposing on municipality obligation to levy tax to pay hydrant rentals was constitutional, not being for "corporate purpose." State ex rel. Metropolitan Utilities Dist. v. City of Omaha, 112 Neb. 694, 200 N.W. 871 (1924).

Act authorizing county to levy tax to raise road fund is political power and not for corporate purposes within meaning of this section. City of Albion v. Boone County, 94 Neb. 494, 143 N.W. 749 (1913).

Act authorizing city to pension firemen and imposition of tax therefor does not violate this section. State ex rel. Haberlan v. Love, 89 Neb. 149, 131 N.W. 196 (1911).

Act authorizing city to enforce assessment against street railway for pavement between its tracks does not violate this section. Lincoln Street Railway Co. v. City of Lincoln, 61 Neb. 109, 84 N.W. 802 (1901).

**3. Miscellaneous**

The prohibition in this section applies only where the levy is for corporate or proprietary purposes and is not levied by local authority and therefore is not contravened by L.B. 1003, Eighty-second Legislature, First Session, sections 23-2601 to 23-2612. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

The term municipal corporations herein refers only to those which exercise governmental as distinguished from proprietary functions. Evans v. Metropolitan Utilities Dist., 187 Neb. 261, 188 N.W.2d 851 (1971).

Cited but not discussed. R-R Realty Co. v. Metropolitan Utilities Dist., 184 Neb. 237, 166 N.W.2d 746 (1969).

Airport Authority Act did not violate this section. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

A county is not a "municipal corporation" within meaning of constitutional provision, and gasoline tax imposed thereon is valid. State v. Cheyenne County, 127 Neb. 619, 256 N.W. 67 (1934).

## VIII-8. Funding indebtedness; warrants.

The Legislature at its first session shall provide by law for the funding of all outstanding warrants, and other indebtedness of the state, at a rate of interest not exceeding eight per cent per annum.

**Source:**Neb. Const. art. IX, sec. 8 (1875); Transferred by Constitutional Convention, 1919-1920, art. VIII, sec. 8.

**Annotation**

The sole object of this section is to provide for the payment of existing state debts, the execution of which exhausts the power conferred by this section. State ex rel. Omaha National Bank v. McBride, 6 Neb. 506 (1877).

## VIII-9. Claims upon treasury; adjustment; approval; appeal.

The Legislature shall provide by law that all claims upon the treasury shall be examined and adjusted as the Legislature may provide before any warrant for the amount allowed shall be drawn. Any party aggrieved by the action taken on a claim in which he has an interest may appeal to the district court.

**Source:**Neb. Const. art. IX, sec. 9 (1875); Transferred by Constitutional Convention, 1919-1920, art. VIII, sec. 9; Amended 1964, Laws 1963, c. 302, sec. 2(3), p. 896.

**Annotation**

**1. Appeal to district court**
**2. Miscellaneous**

**1. Appeal to district court**

Certified transcript of proceedings before auditor and Secretary of State must be filed in district court to confer jurisdiction on appeal. Pickus v. State, 115 Neb. 869, 215 N.W. 129 (1927).

Word "appeal" signifies transfer of proceeding for review to district court. Hooper Tel. Co. v. Nebraska Tel. Co., 96 Neb. 245, 147 N.W. 674 (1914).

**2. Miscellaneous**

Section 81-8,305 does not violate this provision. Pavers, Inc. v. Board of Regents, 276 Neb. 559, 755 N.W.2d 400 (2008).

Nebraska State Board of Agriculture, through failure to have claims examined and allowed by Auditor of Public Accounts, disclosed administrative construction that it was not a governmental agency. Crete Mills v. Nebraska State Board of Agriculture, 132 Neb. 244, 271 N.W. 684 (1937).

Mandamus is proper remedy against state officers to enforce execution and delivery of warrant where appropriation therefor has been made by Legislature. State ex rel. National Surety Corp. v. Price, 129 Neb. 433, 261 N.W. 894 (1935).

Act providing for refunding of excess grain inspection fees was not in conflict herewith. Bollen v. Price, 129 Neb. 342, 261 N.W. 689 (1935).

Word "claims" means claims which state is or may be under legal obligation to pay. It does not include appropriation of specific fund by Legislature to named person as donation, gift, or reward, or for which state was under no legal obligation. State ex rel. Sayre v. Moore, 40 Neb. 854, 59 N.W. 755 (1894).

This section was intended to restrict application of money raised by taxation and not as limitation upon discretion of Legislature in selecting agencies through which it is to be expended. State ex rel. Garneau v. Moore, 37 Neb. 507, 55 N.W. 1078 (1893), 56 N.W. 154 (1893).

## VIII-10. Taxation of grain and seed; alternative basis permitted.

Notwithstanding the other provisions of Article VIII, the Legislature is authorized to substitute a basis other than valuation for taxes upon grain and seed produced or handled in this state. Existing revenue laws not inconsistent with the Constitution shall continue in effect until changed by the Legislature.

**Source:**Neb. Const. art. VIII, sec. 10 (1956); Adopted 1956, Laws 1955, c. 197, sec. 1, p. 562.

## VIII-11. Public corporations and political subdivisions providing electricity; payment in lieu of taxes.

Every public corporation and political subdivision organized primarily to provide electricity or irrigation and electricity shall annually make the same payments in lieu of taxes as it made in 1957, which payments shall be allocated in the same proportion to the same public bodies or their successors as they were in 1957.

The legislature may require each such public corporation to pay to the treasurer of any county in which may be located any incorporated city or village, within the limits of which such public corporation sells electricity at retail, a sum equivalent to five (5) per cent of the annual gross revenue of such public corporation derived from retail sales of electricity within such city or village, less an amount equivalent to the 1957 payments in lieu of taxes made by such public corporation with respect to property or operations in any such city or village. The payments in lieu of tax as made in 1957, together with any payments made as authorized in this section shall be in lieu of all other taxes, payments in lieu of taxes, franchise payments, occupation and excise taxes, but shall not be in lieu of motor vehicle licenses and wheel taxes, permit fees, gasoline tax and other such excise taxes or general sales taxes levied against the public generally.

So much of such five (5) per cent as is in excess of an amount equivalent to the amount paid by such public corporation in lieu of taxes in 1957 shall be distributed in each year to the city or village, the school districts located in such city or village, the county in which such city or village is located, and the State of Nebraska, in the proportion that their respective property tax mill levies in each such year bear to the total of such mill levies.

**Source:**Neb. Const. art. VIII, sec. 11 (1958); Adopted 1958, Initiative Measure No. 300, art. VIII, sec. 10. **Note:** At the general election in 1958, an amendment was adopted pursuant to initiative petition providing for payment in lieu of taxes by public corporations and political subdivisions supplying electricity. This amendment stated it was to amend Article VIII by adding a new section. The figure 10 was shown at the beginning of the new section to be added. There was already an amendment to the Constitution adopted in 1956 designated as Article VIII, section 10. Therefore, the 1958 amendment has been designated as Article VIII, section 11.

**Annotation**

> Payments made by public power district were not franchise payments. City of O'Neill v. Consumers P. P. Dist., 179 Neb. 773, 140 N.W.2d 644 (1966).

## VIII-12. Cities or villages; redevelopment project; substandard and blighted property; incur indebtedness; taxes; how treated.

For the purpose of rehabilitating, acquiring, or redeveloping substandard and blighted property in a redevelopment project as determined by law, any city or village of the state may, notwithstanding any other provision in the Constitution, and without regard to charter limitations and restrictions, incur indebtedness, whether by bond, loans, notes, advance of money, or otherwise. Notwithstanding any other provision in the Constitution or a local charter, such cities or villages may also pledge for and apply to the payment of the principal, interest, and any premium on such indebtedness all taxes levied by all taxing bodies, which taxes shall be at such rate for a period not to exceed fifteen years, on the assessed valuation of the property in the project area portion of a designated blighted and substandard area that is in excess of the assessed valuation of such property for the year prior to such rehabilitation, acquisition, or redevelopment.

When such indebtedness and the interest thereon have been paid in full, such property thereafter shall be taxed as is other property in the respective taxing jurisdictions and such taxes applied as all other

taxes of the respective taxing bodies.

**Source:**Neb. Const. art. VIII, sec. 12 (1978); Adopted 1978, Laws 1978, LB 469, sec. 1; Amended 1984, Laws 1984, LR 227, sec. 1; Amended 1988, Laws 1987, LR 11, sec. 1.

**VIII-13. Revenue laws and legislative acts; how construed.**

Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary, amendments to Article VIII of this Constitution passed in 1992 shall be effective from and after January 1, 1992, and existing revenue laws and legislative acts passed in the regular legislative session of 1992, not inconsistent with this Constitution as amended, shall be considered ratified and confirmed by such amendments without the need for legislative reenactment of such laws.

**Source:**Neb. Const. art. VIII, sec. 13 (1992); Adopted 1992, Laws 1992, LR 219CA, sec. 1.

**VIII-1A. Levy of property tax for state purposes; prohibition.**

The state shall be prohibited from levying a property tax for state purposes.

**Source:**Neb. Const. art. VIII, sec. 1A (1954); Adopted 1954, Laws 1954, Sixty-sixth Extraordinary Session, c. 5, sec. 1, p. 65; Amended 1966, Initiative Measure No. 301.

**Annotation**

A property tax in furtherance of compliance with an interstate compact is, for purposes of analysis under this provision, a property tax levied by the State for state purposes. Garey v. Nebraska Dept. of Nat. Resources, 277 Neb. 149, 759 N.W.2d 919 (2009).

Section 2-3225(1)(d) violates the prohibition against levying a property tax for state purposes found in this provision and is therefore unconstitutional. Garey v. Nebraska Dept. of Nat. Resources, 277 Neb. 149, 759 N.W.2d 919 (2009).

The Class VI school system tax levy set forth in section 79-1078 (formerly section 79-438.13) is not a levy for state purposes and therefore does not violate this provision. Swanson v. State, 249 Neb. 466, 544 N.W.2d 333 (1996).

Chapter 79, article 26, the Technical Community College Area Act, is not in violation of this provision of the Constitution. State ex rel. Western Technical Com. Col. Area v. Tallon, 196 Neb. 603, 244 N.W.2d 183 (1976).

Statutory provisions requiring counties to pay cost of maintaining a county court, prosecuting criminal law violations, and conducting state and national elections do not contravene the constitutional provision which prohibits property tax by state. State ex rel. Meyer v. County of Banner, 196 Neb. 565, 244 N.W.2d 179 (1976).

Where state and local purposes are commingled, the crucial issue turns upon a determination of whether the controlling purposes are state or local. Counties may be required to pay attorney's fees for one appointed to defend an indigent defendant. Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975).

Where the state assumes control and the primary burden of financial support of a statewide system under provisions of the Nebraska Technical Community College Act, the property tax under section 79-2626 is for a state purpose under this Article. State ex rel. Western Nebraska Technical Com. Col. Area v. Tallon, 192 Neb. 201, 219 N.W.2d 454 (1974).

Statute authorizing or requiring a local subdivision to levy a property tax for local fire protection purposes does not contravene this section. R-R Realty Co. v. Metropolitan Utilities Dist., 184 Neb. 237, 166 N.W.2d 746 (1969).

County levies to support institutional patients in state facilities not violative of this section. Craig v. Board of Equalization of Douglas County, 183 Neb. 779, 164 N.W.2d 445 (1969).

**VIII-1B. Income tax; may be based upon the laws of the United States.**

When an income tax is adopted by the Legislature, the Legislature may adopt an income tax law based upon the laws of the United States.

**Source:**Neb. Const. art. VIII, sec. 1B (1966); Adopted 1966, Laws 1965, c. 292, sec. 1, p. 833.

**Annotation**

The Legislature has authority to enact state income tax laws which incorporate future income tax laws of the United States. Anderson v. Tiemann, 182 Neb. 393, 155 N.W.2d 322 (1967).

**VIII-2A. Exemption of personal property in transit in licensed warehouses or storage areas.**

The Legislature may establish bonded and licensed warehouses or storage areas for goods, wares and merchandise in transit in the state which are intended for and which are shipped to final destinations outside this state upon leaving such warehouses or storage areas, and may exempt such goods, wares and merchandise from ad valorem taxation while in such storage areas.

**Source:**Neb. Const. art. VIII, sec. 2A (1960); Adopted 1960, Laws 1959, c. 239, sec. 1, p. 825.

**Annotation**

Free port law does not violate constitutional provisions for uniformity and against special privileges. Norden Laboratories, Inc. v. County Board of Equalization of Lancaster County, 189 Neb. 437, 203 N.W.2d 152 (1973).

**IX-1. Area.**

No new county shall be formed or established by the legislature which will reduce the county or counties, or either of them to a less area than four hundred square miles, nor shall any county be formed of a less area.

**Source:**Neb. Const. art. X, sec. 1 (1875); Transferred by Constitutional Convention, 1919-1920, art. IX, sec. 1.

**IX-2. Division of county; decision of question.**

No county shall be divided nor any part of the territory of any county be stricken therefrom, nor shall any county or part of the territory of any county be added to an adjoining county without submitting the question to the qualified electors of each county affected thereby, nor unless approved by a majority of the qualified electors of each county voting thereon; provided, that when county boundaries divide sections, or overlap, or fail to meet, or are in doubt, the Legislature may by law provide for their adjustment, but in all cases the new boundary shall follow the nearest section line or the thread of the main channel of a boundary stream.

**Source:**Neb. Const. art. X, sec. 2 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 29; Transferred by Constitutional Convention, 1919-1920, art. IX, sec. 2.

**Annotation**

L.B. 1003, Eighty-second Legislature, First Session (sections 23-2601 to 23-2612) did not violate this section. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

The power given the county board to establish a hospital district containing contiguous land in more than one county is a reasonable provision and does not violate this section. Syfie v. Tri-County Hospital Dist., 186 Neb. 478, 184 N.W.2d 398 (1971).

The boundaries of a county cannot be changed or reduced without submitting the propositions to the voters of the county. Wayne County v. Cobb, 35 Neb. 231, 52 N.W. 1102 (1892); State ex rel. Packard v. Nelson, 34 Neb. 162, 51 N.W. 648 (1892).

**IX-3. County added to another; prior indebtedness; county stricken off; liabilities.**

When a county shall be added to another, all prior indebtedness of each county shall remain a charge on the taxable property within the territory of each county as it existed prior to consolidation. When any part of a county is stricken off and attached to another county, the part stricken off shall be holden for its proportion of all then existing liabilities of the county from which it is taken, but shall not be holden for any then existing liabilities of the county to which it is attached.

**Source:**Neb. Const. art. X, sec. 3 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 29; Transferred by Constitutional Convention, 1919-1920, art. IX, sec. 3.

**IX-4. County and township officers.**

The Legislature shall provide by law for the election of such county and township officers as may be necessary and for the consolidation of county offices for two or more counties; *Provided,* that each of the counties affected may disapprove such consolidation by a majority vote in each of such counties.

**Source:**Neb. Const. art. X, sec. 4 (1875); Transferred by Constitutional Convention, 1919-1920, art. IX, sec. 4; Amended 1968, Laws 1967, c. 308, sec. 1, p. 834.

**Annotation**

The members of the commission provided for in L.B. 1003, Eighty-second Legislature, First

Session (sections 23-2601 to 23-2612), are not county officers and the act does not violate this section. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

County manager is an officer of the county within the meaning of this section. State ex rel. O'Connor v. Tusa, 130 Neb. 528, 265 N.W. 524 (1936).

Division of county into commissioner districts must give equal power in local government of the county. State ex rel. Harte v. Moorhead, 99 Neb. 527, 156 N.W. 1067 (1916).

County judges are not considered as classed with "county officers." Conroy v. Hallowell, 94 Neb. 794, 144 N.W. 895 (1913).

The number and character of county officers that may be created rests in the discretion of the Legislature. Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

**IX-5. Township organization.**

The Legislature shall provide by general law for township organization, under which any county may organize whenever a majority of the legal voters of such county voting at any general election shall so determine; and in any county that shall have adopted a township organization the question of continuing the same may be submitted to a vote of the electors of such county at a general election in the manner that shall be provided by law.

**Source:**Neb. Const. art. X, sec. 5 (1875); Transferred by Constitutional Convention, 1919-1920, art. IX, sec. 5.

**Annotation**

L.B. 1003, Eighty-second Legislature, First Session (sections 23-2601 to 23-2612) did not violate this section. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

It was the intention by this section to permit adoption of township system of government in counties. Chicago, B. & Q. R. R. Co. v. Klein, 52 Neb. 258, 71 N.W. 1069 (1897).

In order to adopt township organization, a majority of the legal voters of the county voting at the election must be recorded in favor of it. State ex rel. Hocknell v. Roper, 46 Neb. 724, 61 N.W. 753 (1895).

Vote of people is only required upon general question of adopting or continuing township organization. Van Horn v. State ex rel. Abbott, 46 Neb. 62, 64 N.W. 365 (1895).

Adoption of township organization does not shorten terms of county officers. State ex rel. Crossley v. Hedlund, 16 Neb. 566, 20 N.W. 876 (1884).

**X-1. Reports under oath.**

Every public utility corporation or common carrier organized or doing business in this state shall report, under oath, to the Railway Commission, when required by law or the order of said Commission. The reports so made shall include such matter as may be required by law or the order of said Commission.

**Source:**Neb. Const. art. XI, sec. 1 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 30; Transferred by Constitutional Convention, 1919-1920, art. X, sec. 1.

**X-2. Property liable to sale on execution.**

The rolling stock and all other movable property belonging to any railroad company or corporation in this state, shall be liable to execution and sale in the same manner as the personal property of individuals, and the legislature shall pass no law exempting any such property from execution and sale.

**Source:**Neb. Const. art. XI, sec. 2 (1875); Transferred by Constitutional Convention, 1919-1920, art. X, sec. 2.

**X-3. Consolidation of stock or property.**

No public utility corporation or common carrier shall consolidate its stock, property, franchise, or earnings in whole or in part with any other public utility corporation or common carrier owning a parallel or competing property without permission of the Railway Commission; and in no case shall any consolidation take place except upon public notice of at least sixty days to all stockholders, in such manner as may be provided by law. The Legislature may by law require all public utilities and common carriers to exchange business through physical connection, joint use, connected service, or otherwise.

**Source:**Neb. Const. art. XI, sec. 3 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 31; Transferred by Constitutional Convention, 1919-1920, art. X, sec. 3.

**Annotation**

This Article permits but does not compel exchange of business through physical connections, joint use, connected service, or otherwise and public policy in the field is within the legislative domain. City of Lincoln v. Nebraska P.P. Dist., 191 Neb. 556, 216 N.W.2d 722 (1974).

Under section prior to amendment of 1920, the word "railroad" did not apply to street railway companies, and they were not prohibited from consolidating their lines. State ex rel. Winnett v. Omaha & C. B. St. Ry. Co., 96 Neb. 725, 148 N.W. 946 (1914); State ex rel. Tyrrell v. Lincoln Traction Co., 90 Neb. 535, 134 N.W. 278 (1912).

Prohibition against consolidation extends to leasing. State ex rel. Leese v. Atchison & Nebraska R. R. Co., 24 Neb. 143, 38 N.W. 43 (1888), 8 A.S.R. 164 (1888).

**X-4. Railways declared public highways; maximum rates; liability not limited.**

Railways heretofore constructed, or that may hereafter be constructed, in this state are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the legislature may from time to time pass laws establishing reasonable maximum rates of charges for the transportation of passengers and

freight on the different railroads in this state. The liability of railroad corporations as common carriers shall never be limited.

**Source:**Neb. Const. art. XI, sec. 4 (1875); Transferred by Constitutional Convention, 1919-1920, art. X, sec. 4.

**Annotation**

Railroads in this state are public highways, and title to right-of-way cannot be divested by adverse possession. Edholm v. Missouri P. R. R. Corp., 114 Neb. 845, 211 N.W. 206 (1926); McLucas v. St. Joseph & G. I. Ry. Co., 67 Neb. 603, 93 N.W. 928 (1903).

Railroad is liable for negligence notwithstanding contract limiting liability. Maucher v. Chicago, R. I. & P. Ry. Co., 100 Neb. 237, 159 N.W. 422 (1916).

This section does not prohibit Legislature from increasing common law liability of common carriers. Smith v. Chicago, St. P., M. & O. Ry. Co., 99 Neb. 719, 157 N.W. 622 (1916).

A side track connecting with main line of railroad will be presumed to be a part of the public system of the company, and a public highway. Roby v. State ex rel. Farmers Grain & Live Stock Co., 76 Neb. 450, 107 N.W. 766 (1906).

Railroads must receive cars of another road when gauge is suitable and cars offered are not defective. Chicago, B. & Q. R. Co. v. Curtis, 51 Neb. 442, 71 N.W. 42 (1897), 66 A.S.R. 456 (1897).

Congress has legislated upon the subject of liability of carriers for loss or damage to interstate shipments, superseding all provisions of state constitutions or laws prohibiting carriers from limiting their liability by contract. C., St. P., M. & O. R. Co. v. Latta, 226 U.S. 519 (1913); C., B. & Q. R. Co. v. Miller, 226 U.S. 513 (1913).

Agreement under which constructor of unloading pit agreed to indemnify railroad which owned trackage over pit against all claims arising out of the construction, maintenance, use, and existence of pit did not contravene this Article. Linden v. Chicago, B. & Q. R.R., 483 F.2d 29 (8th Cir. 1973).

**X-5. Capital stock; dividends.**

The capital stock of public utility corporations or common carriers shall not be increased for any purpose, except after public notice for sixty days, and in such manner as may be provided by law. No dividend shall be declared or distributed except out of net earnings after paying all operating expenses including a depreciation reserve sufficient to keep the investment intact.

**Source:**Neb. Const. art. XI, sec. 5 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 32; Transferred by Constitutional Convention, 1919-1920, art. X, sec. 5.

**X-6. Eminent domain.**

The exercise of the power and the right of eminent domain shall never be so construed or abridged as to

prevent the taking by the legislature, of the property and franchises of incorporated companies already organized, or hereafter to be organized, and subjecting them to the public necessity the same as of individuals.

**Source:**Neb. Const. art. XI, sec. 6 (1875); Transferred by Constitutional Convention, 1919-1920, art. X, sec. 6.

**Annotation**

Lands acquired by eminent domain by railroad for right-of-way are dedicated to public use, and title thereto cannot be divested by adverse possession so long as railroad is operated. Edholm v. Missouri P. R. R. Corp., 114 Neb. 845, 211 N.W. 206 (1926).

Compensatory damages should be allowed for land taken for right-of-way for public road. Missouri Pac. R. R. Co. v. Cass County, 76 Neb. 396, 107 N.W. 773 (1906).

**X-7. Unjust discrimination and extortion.**

The Legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion in all charges of express, telegraph and railroad companies in this state and enforce such laws by adequate penalties to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

**Source:**Neb. Const. art. XI, sec. 7 (1875); Transferred by Constitutional Convention, 1919-1920, art. X, sec. 7.

**Annotation**

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. Myers v. Blair Tel. Co., 194 Neb. 55, 230 N.W.2d 190 (1975).

Legislature delegated power hereunder to inquire into discriminatory rates to the railway commission. Allen v. Omaha Transit Co., Inc., 187 Neb. 156, 187 N.W.2d 760 (1971).

Not all discriminations are prohibited by this section. Statute permitting free transportation to ministers and charity workers is not violative of this section. State ex rel. Sorensen v. Chicago, B. & Q. R. R. Co., 112 Neb. 248, 199 N.W. 534 (1924).

Railway Commission Act follows the mandate of this section. State v. Union Pacific R. R. Co., 87 Neb. 29, 126 N.W. 859 (1910).

Telegraph companies were placed in the same class with railroad companies and other common carriers. Western Union Tel. Co. v. State, 86 Neb. 17, 124 N.W. 937 (1910).

Anti-pass law, applied to intrastate transportation, is constitutional. State v. Martyn, 82 Neb. 225, 117 N.W. 719 (1908).

It is not undue preference to give one patron a less rate where fairly justified by differences in conditions affecting expense or difficulty of rendering service. Western Union Tel. Co. v. Call Pub. Co., 44 Neb. 326, 62 N.W. 506 (1895), affirmed by 181 U.S. 92 (1901).

**X-8. Eminent domain for depot or other uses.**

No railroad corporation organized under the laws of any other state, or of the United States and doing business in this state shall be entitled to exercise the right of eminent domain or have power to acquire the right of way, or real estate for depot or other uses, until it shall have become a body corporate pursuant to and in accordance with the laws of this state.

**Source:**Neb. Const. art. XI, sec. 8 (1875); Transferred by Constitutional Convention, 1919-1920, art. X, sec. 8.

**Annotation**

Railroad corporation is required to become a body corporate of this state to exercise right of eminent domain. Omaha Nat. Bank v. Jensen, 157 Neb. 22, 58 N.W.2d 582 (1953).

Foreign corporation cannot exercise right of eminent domain. Koenig v. Chicago, B. & Q. R. R. Co., 27 Neb. 699, 43 N.W. 423 (1889); State ex rel. Burlington & Missouri R.R. Co. v. Scott, 22 Neb. 628, 36 N.W. 121 (1888).

Foreign corporation may consolidate with domestic and exercise power of eminent domain. State ex rel. Leese v. Chicago, B. & Q. R. R. Co., 25 Neb. 156, 41 N.W. 125 (1888), 2 L.R.A. 564 (1888).

No foreign railway company doing business in this state can exercise right of eminent domain or have power to acquire right-of-way unless organized as a corporation under laws of this state. Trester v. Missouri P. Ry. Co., 23 Neb. 242, 36 N.W. 502 (1888).

**XI-1. Subscription to stock prohibited; exception.**

No city, county, town, precinct, municipality, or other subdivision of the state shall ever become a subscriber to the capital stock, or owner of such stock, or any portion or interest therein of any railroad, or private corporation, or association, except that, notwithstanding any other provision of this Constitution, the Legislature may authorize the investment of public endowment funds by any city which is authorized by this Constitution to establish a charter, in the manner required of a prudent investor who shall act with care, skill, and diligence under the prevailing circumstance and in such investments as the governing body of such city, acting in a fiduciary capacity for the exclusive purpose of protecting and benefiting such investment, may determine, subject to such limitations as the Legislature may by statute provide.

**Source:**Neb. Const. art. XI, sec. 1 (1875); Transferred in 1907, art. XIa, sec. 1; Transferred by Constitutional Convention, 1919-1920, art. XI, sec. 1; Amended 2008, Laws 2007, LR6CA, sec. 1.

**Annotation**

This Article and section of the Nebraska Constitution prohibits the deposit of funds by subdivisions of the State of Nebraska in mutual savings and loan associations, whether federal or state chartered, except those funds authorized under Article XV, section 17(2), of the Constitution of Nebraska. Nebraska League of S. & L. Assns. v. Mathes, 201 Neb. 122, 266

N.W.2d 720 (1978).

**XI-2. City of 5,000 may frame charter; procedure.**

Any city having a population of more than five thousand (5000) inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this state, by causing a convention of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city at any general or special election, whose duty it shall be within four months after such election, to prepare and propose a charter for such city, which charter, when completed, with a prefatory synopsis, shall be signed by the officers and members of the convention, or a majority thereof, and delivered to the clerk of said city, who shall publish the same in full, with his official certification, in the official paper of said city, if there be one, and if there be no official paper, then in at least one newspaper published and in general circulation in said city, three times, and a week apart, and within not less than thirty days after such publication it shall be submitted to the qualified electors of said city at a general or special election, and if a majority of such qualified voters, voting thereon, shall ratify the same, it shall at the end of sixty days thereafter, become the charter of said city, and supersede any existing charter and all amendments thereof. A duplicate certificate shall be made, setting forth the charter proposed and its ratification (together with the vote for and against) and duly certified by the City Clerk, and authenticated by the corporate seal of said city and one copy thereof shall be filed with the Secretary of State and the other deposited among the archives of the city, and shall thereupon become and be the charter of said city, and all amendments of such charter, shall be authenticated in the same manner, and filed with the secretary of state and deposited in the archives of the city.

**Source:**Neb. Const. (1912); Adopted 1912, Laws 1911, c. 227, sec. 2, p. 681; Transferred in 1913, art. XIa, sec. 2; Transferred by Constitutional Convention, 1919-1920, art. XI, sec. 2.

**Annotation**

**1. State concern**
**2. Local concern**
**3. Miscellaneous**

**1. State concern**

A home rule charter must be consistent with and subject to the Constitution and laws of the state. Retired City Gov. Emp. Club of Omaha v. City of Omaha Emp. Ret. Sys., 199 Neb. 507, 260 N.W.2d 472 (1977); City of Millard v. City of Omaha, 185 Neb. 617, 177 N.W.2d 576 (1970); State ex rel. City of Grand Island v. Johnson, 175 Neb. 498, 122 N.W.2d 240 (1963); Axberg v. City of Lincoln, 141 Neb. 55, 2 N.W.2d 613 (1942).

The subject of vacation of streets is a matter of statewide concern, and statute controls over city charter. Dell v. City of Lincoln, 170 Neb. 176, 102 N.W.2d 62 (1960).

Home rule charter cities have authority to exercise all powers of local self-government. Mollner v. City of Omaha, 169 Neb. 44, 98 N.W.2d 33 (1959).

Where Legislature has delegated power of eminent domain to municipal corporation, home rule charter provisions must yield thereto. State ex rel. Nelson v. Butler, 145 Neb. 638, 17 N.W.2d 683 (1945).

General law of statewide concern takes precedence over conflicting provision of city home rule charter. Nagle v. City of Grand Island, 144 Neb. 67, 12 N.W.2d 540 (1943).

Statute authorizing municipal university was not violative of constitutional provision permitting cities to adopt home rule charter, as matter is of state concern, and city in accepting privilege acts as political subdivision of state. Carlberg v. Metcalfe, 120 Neb. 481, 234 N.W. 87 (1930).

Resolution of council for employment of technical advisors to prepare zoning ordinance was not subject to referendum provisions of city charter. Schroeder v. Zehrung, 108 Neb. 573, 188 N.W. 237 (1922).

**2. Local concern**

Home rule charter must be consistent with and subject to Constitution and laws of state. Michelson v. City of Grand Island, 154 Neb. 654, 48 N.W.2d 769 (1951).

Purpose of home rule charter provisions of Constitution is to render cities as nearly independent as possible of state legislation, subject to the general public policy of the state. State ex rel. Fischer v. City of Lincoln, 137 Neb. 97, 288 N.W. 499 (1939).

A city may put into its home rule charter any provisions for its government that it deems proper so long as they do not run contrary to the Constitution or to any general statute. Eppley Hotels Co. v. City of Lincoln, 133 Neb. 550, 276 N.W. 196 (1937).

Provisions of charter adopted by city govern as to matters of local concern, including street improvement, over legislative charter existing prior thereto. Salsbury v. City of Lincoln, 117 Neb. 465, 220 N.W. 827 (1928).

As to matters of local concern, cities are independent of state legislation and general laws yield to charter. Sandell v. City of Omaha, 115 Neb. 861, 215 N.W. 135 (1927).

Amendment to charter, and ordinance thereunder, authorizing city to sell oil and gasoline, was proper function of local government. Mutual Oil Co. v. Zehrung, 11 F.2d 887 (D. Neb. 1925).

**3. Miscellaneous**

Constitution recognizes that villages and cities are separate and distinct. Hueftle v. Eustis Cemetery Assn., 171 Neb. 293, 106 N.W.2d 400 (1960).

Home rule charter city, upon annexation of adjoining city, continued in force rights, obligations and duties of city annexed. Enyeart v. City of Lincoln, 136 Neb. 146, 285 N.W. 314 (1939).

City ordinance regulating sale of intoxicating liquors, passed by home rule charter city, was not inconsistent with state law. Bodkin v. State, 132 Neb. 535, 272 N.W. 547 (1937).

Charter provision for sale by city of gasoline and oil was valid. Standard Oil Co. v. City of Lincoln, 114 Neb. 243, 207 N.W. 172 (1926).

Charter provision authorizing city to construct, acquire and operate gas and electric plants, and other utilities, did not, by implication, authorize operation of municipal fuel yard. Consumers Coal Co. v. City of Lincoln, 109 Neb. 51, 189 N.W. 643 (1922).

**XI-3. Rejection of charter; effect; procedure to frame new charter.**

But if said charter be rejected, then within six months thereafter, the mayor and council or governing authorities of said city may call a special election at which fifteen members of a new charter convention shall be elected to be called and held as above in such city, and they shall proceed as above to frame a charter which shall in like manner and to the like end be published and submitted to a vote of said voters for their approval or rejection. If again rejected, the procedure herein designated may be repeated until a charter is finally approved by a majority of those voting thereon, and certified (together with the vote for and against) to the secretary of state as aforesaid, and a copy thereof deposited in the archives of the city, whereupon it shall become the charter of said city. Members of each of said charter conventions shall be elected at large, and they shall complete their labors within sixty days after their respective election. The charter shall make proper provision for continuing, amending or repealing the ordinances of the city.

**Source:**Neb. Const. (1912); Adopted 1912, Laws 1911, c. 227, sec. 3, p. 682; Transferred in 1913, art. XIa, sec. 3; Transferred by Constitutional Convention, 1919-1920, art. XI, sec. 3.

**Annotation**

> Amendment to charter, and ordinance thereunder, authorizing sale of oil and gasoline by city, was not in violation of this article. Mutual Oil Co. v. Zehrung, 11 F.2d 887 (D. Neb. 1925).

**XI-4. Charter; amendment; charter convention.**

Such charter so ratified and adopted may be amended, or a charter convention called, by a proposal therefor made by the law-making body of such city or by the qualified electors in number not less than five per cent of the next preceding gubernatorial vote in such city, by petition filed with the council or governing authorities. The council or governing authorities shall submit the same to a vote of the qualified electors at the next general or special election not held within thirty days after such petition is filed. In submitting any such charter or charter amendments, any alternative article or section may be presented for the choice of the voters and may be voted on separately without prejudice to others. Whenever the question of a charter convention is carried by a majority of those voting thereon, a charter convention shall be called through a special election ordinance, and the same shall be constituted and held and the proposed charter submitted to a vote of the qualified electors, approved or rejected, as provided in Section two hereof. The City Clerk of said city shall publish with his official certification, for three times, a week apart in the official paper in said city, if there be one, and if there be no official paper, then in at least one newspaper, published and in general circulation in said city, the full text of any charter or charter amendment to be voted on at any general or special election.

No charter or charter amendment adopted under the provisions of this amendment shall be amended or repealed except by electoral vote. And no such charter or charter amendment shall diminish the tax rate for state purposes fixed by act of the Legislature, or interfere in any wise with the collection of state taxes.

**Source:**Neb. Const. (1912); Adopted 1912, Laws 1911, c. 227, sec. 4, p. 682; Transferred in 1913, art. XIa, sec. 4; Transferred by Constitutional Convention, 1919-1920, art. XI, sec. 4.

**Annotation**

Provision prohibiting amendment or repeal of home rule charter except by electoral vote intended as restriction on powers of municipality and not as restriction on powers of Legislature in annexation matters. City of Millard v. City of Omaha, 185 Neb. 617, 177 N.W.2d 576 (1970).

Publication of home rule charter amendment, to be voted upon at election, was sufficient. Sandell v. City of Omaha, 115 Neb. 861, 215 N.W. 135 (1927).

Amendment to charter, and ordinance thereunder, authorizing city to sell oil and gasoline, was valid. Mutual Oil Co. v. Zehrung, 11 F.2d 887 (D. Neb. 1925).

**XI-5. Charter of city of 100,000; home rule charter authorized.**

The charter of any city having a population of more than one hundred thousand inhabitants may be adopted as the home rule charter of such city by a majority vote of the qualified electors of such city voting upon the question, and when so adopted may thereafter be changed or amended as provided in Section 4 of this article, subject to the Constitution and laws of the state.

**Source:**Neb. Const. art. XIa, sec. 5 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 33; Transferred by Constitutional Convention, 1919-1920, art. XI, sec. 5.

**Annotation**

**1. Home rule charter**
**2. State concern**
**3. Local concern**
**4. Miscellaneous**

**1. Home rule charter**

The city tax authorized by section 23-2611 (5), R.S.Supp.,1971, does not contravene the Omaha city charter adopted hereunder. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

Home rule charters of Omaha of 1922 and 1956 were adopted pursuant to this section. Wolf v. City of Omaha, 177 Neb. 545, 129 N.W.2d 501 (1964).

Under this section, Omaha adopted as its home rule charter the provisions of Chapter 116, Laws of 1921. Belitz v. City of Omaha, 172 Neb. 36, 108 N.W.2d 421 (1961); Papke v. City of Omaha, 152 Neb. 491, 41 N.W.2d 751 (1950); Roncka v. Fogarty, 152 Neb. 467, 41 N.W.2d 745 (1950); Ash v. City of Omaha, 152 Neb. 393, 41 N.W.2d 386 (1950).

Omaha home rule charter of 1956 completely superseded home rule charter of 1922. Mollner v. City of Omaha, 169 Neb. 44, 98 N.W.2d 33 (1959).

Metropolitan city of Omaha adopted legislative act in toto as its home rule charter. Reid v. City of Omaha, 150 Neb. 286, 34 N.W.2d 375 (1948).

Home rule charter amendment changing pension and retirement benefits did not deprive policemen of vested rights. Lickert v. City of Omaha, 144 Neb. 75, 12 N.W.2d 644 (1944).

Adoption of home rule charter does not, of itself, give a city jurisdiction over a street railway

save in matters of strictly municipal concern. Omaha & C. B. St. Ry. Co. v. City of Omaha, 125 Neb. 825, 252 N.W. 407 (1934).

Publication of proposed charter amendment, to be submitted at election, was sufficient. Sandell v. City of Omaha, 115 Neb. 861, 215 N.W. 135 (1927).

**2. State concern**

Labor relations and practices were matters of statewide concern, and take precedence over any provisions in home rule charter. Midwest Employers Council, Inc. v. City of Omaha, 177 Neb. 877, 131 N.W.2d 609 (1964).

Statutes on eminent domain procedure control over city charter. Van Patten v. City of Omaha, 167 Neb. 741, 94 N.W.2d 664 (1959).

Parking Authority Law was a matter of statewide concern and not subject to home rule charter. Omaha Parking Authority v. City of Omaha, 163 Neb. 97, 77 N.W.2d 862 (1956).

A municipal corporation has only such powers as are expressly conferred upon it in matters of strictly municipal concern, and in cities which adopt a home rule charter state legislation is not excluded on subjects pertaining to state affairs. State ex rel. Hunter v. The Araho, 137 Neb. 389, 289 N.W. 545 (1940).

Omaha charter is subject to limits of Constitution and laws of state. World Realty Co. v. City of Omaha, 113 Neb. 396, 203 N.W. 574 (1925).

**3. Local concern**

The purpose of this section is to render a city adopting a home rule charter independent of state legislation as to all subjects which are of strictly municipal concern. State ex rel. City of Omaha v. Lynch, 181 Neb. 810, 151 N.W.2d 278 (1967).

Purpose of home rule charter provisions of Constitution is to render cities as nearly independent as possible of state legislation, subject to the general public policy of the state. State ex rel. Fischer v. City of Lincoln, 137 Neb. 97, 288 N.W. 499 (1939).

**4. Miscellaneous**

Constitution recognizes that villages and cities are separate and distinct. Hueftle v. Eustis Cemetery Assn., 171 Neb. 293, 106 N.W.2d 400 (1960).

Purpose of home rule charter provisions of Constitution is to render cities as nearly independent as possible of state legislation, subject to the general public policy of the state. State ex rel. Fischer v. City of Lincoln, 137 Neb. 97, 288 N.W. 499 (1939).

Publication of proposed charter amendment, to be submitted at election, was sufficient. Sandell v. City of Omaha, 115 Neb. 861, 215 N.W. 135 (1927).

**XII-1. Legislature to provide for organization, regulation, and supervision of corporations and associations; limitation; elections for directors or managers; voting rights of stockholders.**

The Legislature shall provide by general law for the organization, regulation, supervision and general control of all corporations, and for the organization, supervision and general control of mutual and co-operative companies and associations, and by such legislation shall insure the mutuality and co-operative features and functions thereof. Foreign corporations transacting or seeking to transact business in this state shall be subject, under general law, to regulation, supervision and general control, and shall not be given greater rights or privileges than are given domestic corporations of a similar character. No corporations shall be created by special law, nor their charters be extended, changed or amended, except those corporations organized for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the state. The Legislature shall provide by law that in all elections for directors or managers of incorporated companies every stockholder owning voting stock shall have the right to vote in person or proxy for the number of such shares owned by him, for as many persons as there are directors or managers to be elected or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number his shares shall equal, or to distribute them upon the same principal among as many candidates as he shall think fit, and such directors or managers shall not be elected in any other manner; *Provided,* that any mutual or cooperative company or association may, in its articles of incorporation, limit the number of shares of stock any stockholder may own, the transfer of such stock, and the right of each stockholder or member to one vote only in the meetings of such company or association. All general laws passed pursuant to this section may be altered from time to time, or repealed.

**Source:**Neb. Const. art. XI, sec. 1 (1875); Transferred in 1907, art. XIb, sec. 1;Amended 1920, Constitutional Convention, 1919-1920, No. 34; Transferred by Constitutional Convention, 1919-1920, art. XII, sec. 1; Amended 1972, Laws 1971, LB 762, sec. 1.

**Annotation**

**1. Organization**
**2. Regulation and supervision**
**3. Miscellaneous**

**1. Organization**

This section applies to the granting of franchises and corporate privileges. Omaha Nat. Bank v. Jensen, 157 Neb. 22, 58 N.W.2d 582 (1953).

Provision hereof that foreign corporation shall have no greater rights than domestic refers to granting of franchises and corporate privileges rather than taxation. State ex rel. Beatrice Creamery Co. v. Marsh, 119 Neb. 197, 227 N.W. 926 (1929).

Law providing for organization of sanitary drainage district did not violate provision that no corporation shall be created by special law. Whedon v. Wells, 95 Neb. 517, 145 N.W. 1007 (1914).

**2. Regulation and supervision**

This section permits repeal of statutes under which domestic corporations were formed. State ex rel. Neff v. Christian Brotherhood of American Burial Assn., 186 Neb. 525, 184 N.W.2d 643 (1971).

Existence of Department of Insurance may be traced to Constitution providing for regulation and supervision of corporations, companies and associations. Clark v. Lincoln Liberty Life Ins. Co., 139 Neb. 65, 296 N.W. 449 (1941).

Fraternal benefit corporation cannot incorporate old line insurance company and subscribe for capital stock under guise of cooperation. Folts v. Globe Life Ins. Co., 117 Neb. 723, 223 N.W. 797 (1929).

Statute authorizing amendment of articles of incorporation to change life insurance business from assessment to stock basis, held valid. Leininger v. North Amer. Nat. Life Ins. Co., 115 Neb. 801, 215 N.W. 167 (1927).

Corporations receive their charters only by general law, and are subject to reserve power of the lawmaking body of alteration and amendment. Lincoln Street Railway Co. v. City of Lincoln, 61 Neb. 109, 84 N.W. 802 (1901).

**3. Miscellaneous**

A provision in a lease to which the state is a party which requires the state upon termination of the lease to pay the costs of reletting the property, including the costs of alterations incurred by the owner in placing the property in condition for reletting, violates this Article and section of the Constitution of Nebraska. Ruge v. State, 201 Neb. 391, 267 N.W.2d 748 (1978).

Educational Service Units Act sustained as constitutional. Frye v. Haas, 182 Neb. 73, 152 N.W.2d 121 (1967).

Act creating the Nebraska Grid System violated this section and was held unconstitutional. Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966).

Classification of cities into classes and subclasses does not violate this section. State ex rel Wheeler v. Stuht, 52 Neb. 209, 71 N.W. 941 (1897).

Act creating a corporation for canal construction was in violation of this section. State ex rel. Patterson v. Comrs. of Douglas County, 47 Neb. 428, 66 N.W. 434 (1896).

**XII-2. Repealed 1972. Laws 1971, LB 762, sec. 1.**

**XII-3. Repealed 1972. Laws 1971, LB 762, sec. 1.**

**XII-4. Repealed 1972. Laws 1971, LB 762, sec. 1.**

**XII-5. Repealed 1972. Laws 1971, LB 762, sec. 1.**

**XII-6. Repealed 1972. Laws 1971, LB 762, sec. 1.**

**XII-7. Repealed 1938. Laws 1937, c. 18, sec. 1, p. 124.**

**XII-8. Corporation acquiring an interest in real estate used for farming or ranching or engaging in farming or ranching; restrictions; Secretary of State, Attorney General; duties; Legislature; powers.**

That Article XII of the Constitution of the State of Nebraska be amended by adding a new section numbered 8 and subsections as numbered, notwithstanding any other provisions of this Constitution.

Sec. 8(1) No corporation or syndicate shall acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any title to real estate used for farming or ranching in this state, or engage in farming or ranching.

Corporation shall mean any corporation organized under the laws of any state of the United States or any country or any partnership of which such corporation is a partner.

Farming or ranching shall mean (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products, or (ii) the ownership, keeping or feeding of animals for the production of livestock or livestock products.

Syndicate shall mean any limited partnership organized under the laws of any state of the United States or any country, other than limited partnerships in which the partners are members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day to day labor and management of the farm or ranch, and none of whom are nonresident aliens. This shall not include general partnerships.

These restrictions shall not apply to:

(A) A family farm or ranch corporation. Family farm or ranch corporation shall mean a corporation engaged in farming or ranching or the ownership of agricultural land, in which the majority of the voting stock is held by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day to day labor and management of the farm or ranch and none of whose stockholders are non-resident aliens and none of whose stockholders are corporations or partnerships, unless all of the stockholders or partners of such entities are persons related within the fourth degree of kindred to the majority of stockholders in the family farm corporation.

These restrictions shall not apply to:

(B) Non-profit corporations.

These restrictions shall not apply to:

(C) Nebraska Indian tribal corporations.

These restrictions shall not apply to:

(D) Agricultural land, which, as of the effective date of this Act, is being farmed or ranched, or which is owned or leased, or in which there is a legal or beneficial interest in title directly or indirectly owned, acquired, or obtained by a corporation or syndicate, so long as such land or other interest in title shall be held in continuous ownership or under continuous lease by the same such corporation or syndicate, and including such additional ownership or leasehold as is reasonably necessary to meet the requirements of pollution control regulations. For the purposes of this exemption, land purchased on a contract signed as of the effective date of this amendment, shall be considered as owned on the effective date of this amendment.

These restrictions shall not apply to:

(E) A farm or ranch operated for research or experimental purposes, if any commercial sales from such farm or ranch are only incidental to the research or experimental objectives of the corporation or syndicate.

These restrictions shall not apply to:

(F) Agricultural land operated by a corporation for the purpose of raising poultry.

These restrictions shall not apply to:

(G) Land leased by alfalfa processors for the production of alfalfa.

These restrictions shall not apply to:

(H) Agricultural land operated for the purpose of growing seed, nursery plants, or sod.

These restrictions shall not apply to:

(I) Mineral rights on agricultural land.

These restrictions shall not apply to:

(J) Agricultural land acquired or leased by a corporation or syndicate for immediate or potential use for nonfarming or nonranching purposes. A corporation or syndicate may hold such agricultural land in such acreage as may be necessary to its nonfarm or nonranch business operation, but pending the development of such agricultural land for nonfarm or nonranch purposes, not to exceed a period of five years, such land may not be used for farming or ranching except under lease to a family farm or ranch corporation or a non-syndicate and non-corporate farm or ranch.

These restrictions shall not apply to:

(K) Agricultural lands or livestock acquired by a corporation or syndicate by process of law in the collection of debts, or by any procedures for the enforcement of a lien, encumbrance, or claim thereon, whether created by mortgage or otherwise. Any lands so acquired shall be disposed of within a period of five years and shall not be used for farming or ranching prior to being disposed of, except under a lease to a family farm or ranch corporation or a non-syndicate and non-corporate farm or ranch.

These restrictions shall not apply to:

(L) A bona fide encumbrance taken for purposes of security.

These restrictions shall not apply to:

(M) Custom spraying, fertilizing, or harvesting.

These restrictions shall not apply to:

(N) Livestock futures contracts, livestock purchased for slaughter, or livestock purchased and resold within two weeks.

If a family farm corporation, which has qualified under all the requirements of a family farm or ranch corporation, ceases to meet the defined criteria, it shall have fifty years, if the ownership of the majority of the stock of such corporation continues to be held by persons related to one another within the fourth degree of kindred or their spouses, and their landholdings are not increased, to either re-qualify as a family farm corporation or dissolve and return to personal ownership.

The Secretary of State shall monitor corporate and syndicate agricultural land purchases and corporate and syndicate farming and ranching operations, and notify the Attorney General of any possible violations. If the Attorney General has reason to believe that a corporation or syndicate is violating this amendment, he or she shall commence an action in district court to enjoin any pending illegal land purchase, or livestock operation, or to force divestiture of land held in violation of this amendment. The court shall order any land held in violation of this amendment to be divested within two years. If land so ordered by the court has not been divested within two years, the court shall declare the land escheated to the State of Nebraska.

If the Secretary of State or Attorney General fails to perform his or her duties as directed by this amendment, Nebraska citizens and entities shall have standing in district court to seek enforcement.

The Nebraska Legislature may enact, by general law, further restrictions prohibiting certain agricultural operations that the legislature deems contrary to the intent of this section.

**Source:**Neb. Const. art. XII, sec. 8 (1982); Adopted 1982, Initiative Measure No. 300. **Note:** Proclamation by the Governor occurred on November 29, 1982.

**Annotation**

Pursuant to subsection (2) of section 84-205 and subsection (2) of section 23-1201, the Attorney General has the authority to discharge the duties imposed by this provision of article XII by directing a county attorney to act as the Attorney General's surrogate. If the Attorney General has information which would support an objective belief that an operation is in violation of this provision of article XII, and fails to commence an action, Nebraska citizens have standing to seek enforcement in district court. Hall v. Progress Pig, Inc., 254 Neb. 150, 575 N.W.2d 369 (1998).

A nonstock cooperative corporation formed pursuant to sections 21-1401 et seq. is not a "non-profit corporation" as that term is used under subdivision (1)(B) of this section because it exists and operates for the economic benefit of its members. Pig Pro Nonstock Co-op v. Moore, 253 Neb. 72, 568 N.W.2d 217 (1997).

The introductory passage to this section — "That Article XII of the Constitution of the State of Nebraska be amended by adding a new section numbered 8 and subsections as numbered, notwithstanding any other provisions of this Constitution" — should be added to the printed Constitution, as these words are an integral part of the amendment as adopted. Omaha Nat. Bank v. Spire, 223 Neb. 209, 389 N.W.2d 269 (1986).

The plain language of this section forbids certain corporations from obtaining any kind of interest in certain real estate for certain purposes, including banks from obtaining an interest, even as a trustee, in such real estate. Omaha Nat. Bank v. Spire, 223 Neb. 209, 389 N.W.2d 269 (1986).

This section does not conflict either with the due process clause or the equal protection clause of the fourteenth amendment of the U.S. Constitution, or with 12 U.S.C. section 29 (1982). Omaha Nat. Bank v. Spire, 223 Neb. 209, 389 N.W.2d 269 (1986).

**XIII-1. State may contract debts; limitation; exceptions.**

The state may, to meet casual deficits, or failures in the revenue, contract debts never to exceed in the aggregate one hundred thousand dollars, and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war, and provision shall be made for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt is paid; *Provided,* that if the Legislature determines by a three-fifths vote of the members elected thereto that (1) the need for construction of highways in this state requires such action, it may authorize the issuance of bonds for such construction, and for the payment of the interest and the retirement of such bonds it may pledge any tolls to be received from such

highways or it may irrevocably pledge for the term of the bonds all or a part of any state revenue closely related to the use of such highways, such as motor vehicle fuel taxes or motor vehicle license fees and (2) the construction of water retention and impoundment structures for the purposes of water conservation and management will promote the general welfare of the state, it may authorize the issuance of revenue bonds for such construction, and for the payment of the interest and the retirement of such bonds it may pledge all or any part of any state revenue derived from the use of such structures; *and provided further,* that the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the State Board of Education may issue revenue bonds to construct, purchase, or otherwise acquire, extend, add to, remodel, repair, furnish, and equip dormitories, residence halls, single or multiple dwelling units, or other facilities for the housing and boarding of students, single or married, and faculty or other employees, buildings and structures for athletic purposes, student unions or centers, and for the medical care and physical development and activities of students, and buildings or other facilities for parking, which bonds shall be payable solely out of revenue, fees, and other payments derived from the use of the buildings and facilities constructed or acquired, including buildings and facilities heretofore or hereafter constructed or acquired, and paid for out of the proceeds of other issues of revenue bonds, and the revenue, fees, and payments so pledged need not be appropriated by the Legislature, and any such revenue bonds heretofore issued by either of such boards are hereby authorized, ratified, and validated. Bonds for new construction shall be first approved as the Legislature shall provide.

**Source:**Neb. Const. art. XII, sec. 1 (1875); Transferred by Constitutional Convention, 1919-1920, art. XIII, sec. 1; Amended 1968, Laws 1967, c. 324, sec. 1, p. 861; Amended 1970, Laws 1969, c. 428, sec. 1, p. 1448; Amended 1982, Laws 1982, LB 577, sec. 1.

**Annotation**

Section 66-825, R.S.Supp.,1979, which authorizes a plan for the development of alcohol plants and facilities in Nebraska in effect authorizes the State to guarantee payment of bonds authorized to be issued and thus is unconstitutional and void as violation of this section of the constitutional limitation on debt. State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979).

A lease agreement between the state and a municipal corporation with annual rental periods does not violate this Article and section of the Nebraska Constitution, when the liability of the state is conditioned upon a legislative appropriation having been made before each rental period begins. Ruge v. State, 201 Neb. 391, 267 N.W.2d 748 (1978).

Act which allowed pledging of fees and charges received by the commission beyond the biennium violated this section. State ex rel. Meyer v. Duxbury, 183 Neb. 302, 160 N.W.2d 88 (1968).

Obligations which are to be paid from revenue subject to appropriation by future Legislatures are subject to the state debt limitation of this section. State ex rel. Meyer v. Steen, 183 Neb. 297, 160 N.W.2d 164 (1968).

Law authorizing city of Omaha to build a bridge and finance it by issuing revenue bonds which are charges solely against revenue to be derived from tolls, was valid. Kirby v. Omaha Bridge Commission, 127 Neb. 382, 255 N.W. 776 (1934).

Under the present Constitution the state indebtedness, except for certain extraordinary

contingencies, is limited to $100,000. State ex rel. Bd. of Educ. Lands & Funds v. Stuefer, 66 Neb. 381, 92 N.W. 646 (1902).

**XIII-2. Industrial and economic development; powers of counties and municipalities.**

Notwithstanding any other provision in the Constitution, the Legislature may authorize any county or incorporated city or village, including cities operating under home rule charters, to acquire, own, develop, and lease real and personal property suitable for use by manufacturing or industrial enterprises and to issue revenue bonds for the purpose of defraying the cost of acquiring and developing such property by construction, purchase, or otherwise. The Legislature may also authorize such county, city, or village to acquire, own, develop, and lease real and personal property suitable for use by enterprises as determined by law if such property is located in blighted areas as determined by law and to issue revenue bonds for the purpose of defraying the cost of acquiring and developing or financing such property by construction, purchase, or otherwise. Such bonds shall not become general obligation bonds of the governmental subdivision by which such bonds are issued. Any real or personal property acquired, owned, developed, or used by any such county, city, or village pursuant to this section shall be subject to taxation to the same extent as private property during the time it is leased to or held by private interests, notwithstanding the provisions of Article VIII, section 2, of the Constitution. The acquiring, owning, developing, and leasing of such property shall be deemed for a public purpose, but the governmental subdivision shall not have the right to acquire such property by condemnation. The principal of and interest on any bonds issued may be secured by a pledge of the lease and the revenue therefrom and by mortgage upon such property. No such governmental subdivision shall have the power to operate any such property as a business or in any manner except as the lessor thereof.

Notwithstanding any other provision in the Constitution, the Legislature may also authorize any incorporated city or village, including cities operating under home rule charters, to appropriate such funds as may be deemed necessary for an economic or industrial development project or program subject to approval by a vote of a majority of the registered voters of such city or village voting upon the question. Subject to such vote, funds may be derived from property tax, local option sales tax, or any other general tax levied by the city or village or generated from municipally owned utilities or grants, donations, or state and federal funds received by the city or village subject to any restrictions of the grantor, donor, or state or federal law.

**Source:**Neb. Const. art. XII, sec. 2 (1875); Transferred by Constitutional Convention, 1919-1920, art. XIII, sec. 2; Amended 1972, Laws 1971, LB 688, sec. 1; Amended 1982, Laws 1982, LB 634, sec. 1; Amended 1990, Laws 1990, LR 11, sec. 1; Amended 2010, Laws 2010, LR 297CA, sec. 1.

**Annotation**



**1. Constitutionality**

Provisions of section 18-1401 for expenditure of tax money and income from proprietary functions for purchase by a municipality or a county of property for industrial development violate the Constitution, but the provisions for expenditures for other purposes by a municipality or county itself or through private organizations are constitutional. Chase v. County of Douglas, 195 Neb. 838, 241 N.W.2d 334 (1976).

**2. Prior law**

The public buildings authorized by L.B. 1003, Eighty-second Legislature, First Session (sections 23-2601 to 23-2612), to be used exclusively for public purposes are not works of internal improvement within the meaning of this section. Dwyer v. Omaha-Douglas Public Building Commission, 188 Neb. 30, 195 N.W.2d 236 (1972).

Airport Authority Act did not violate this section. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

Industrial Development Act of 1961 was sustained as constitutional under constitutional amendment notwithstanding this section. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

Paving by city of second class is not work of internal improvement requiring submission to electors. Wookey v. City of Alma, 118 Neb. 158, 223 N.W. 953 (1929).

State roads are not works of internal improvement requiring election before donations thereto. State v. Bone Creek Township, 109 Neb. 202, 190 N.W. 586 (1922), rehearing denied 109 Neb. 208, 193 N.W. 767 (1923).

Donations can be made only to aid in works of internal improvement, and a system of waterworks is not a work of internal improvement. Village of Grant v. Sherrill, 71 Neb. 219, 98 N.W. 681 (1904).

Bridges built by county and wholly within it are not works of internal improvement. DeClerq v. Hager, 12 Neb. 185, 10 N.W. 697 (1881).

**3. Miscellaneous**

A request for injunction is a proper form in which to present the question of unlawful or improper exercise of the power of eminent domain, because the attempt to deprive a private citizen of an estate in his property, if successful, makes the resulting damage irreparable and legal remedies inadequate. Monarch Chemical Works, Inc. v. City of Omaha, 203 Neb. 33, 277 N.W.2d 423 (1979).

The taking of substandard or blighted areas by a city for redevelopment and resale, in accordance with an approved redevelopment plan which is in conformity with a general plan for the municipality as a whole as provided for in these sections, is a proper public use for a municipality. Monarch Chemical Works, Inc. v. City of Omaha, 203 Neb. 33, 277 N.W.2d 423 (1979).

This section does not prohibit a city from using the power of eminent domain to acquire and develop land for manufacturing and industrial sites. Monarch Chemical Works, Inc. v. City of Omaha, 203 Neb. 33, 277 N.W.2d 423 (1979).

This section does not prohibit Legislature from authorizing the electors of a county to vote bonds for poor relief. In re House Roll 284, 31 Neb. 505, 48 N.W. 275 (1891).

## XIII-3. Credit of state; exception.

The credit of the state shall never be given or loaned in aid of any individual, association, or corporation, except that the state may guarantee or make long-term, low-interest loans to Nebraska residents seeking adult or post high school education at any public or private institution in this state. Qualifications for and the repayment of such loans shall be as prescribed by the Legislature.

**Source:**Neb. Const. art. XII, sec. 3 (1875); Transferred by Constitutional Convention, 1919-1920, art. XIII, sec. 3; Amended 1968, Laws 1967, c. 321, sec. 1, p. 855.

**Annotation**

**1. Laws violating prohibition on extending credit**
**2. Laws not violating prohibition**
**3. Miscellaneous**

**1. Laws violating prohibition on extending credit**

Act providing for the reimbursement of funds to depositors of failed industrial loan and investment companies violated this provision. Haman v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991).

Provisions of section 18-1401 for expenditure of tax money and income from proprietary functions for purchase by a municipality or a county of property for industrial development violate the Constitution, but the provisions for expenditures for other purposes by a municipality or county itself or through private organizations are constitutional. Chase v. County of Douglas, 195 Neb. 838, 241 N.W.2d 334 (1976).

Statute offering bounty to provide for the encouragement of the manufacture of sugar and chicory violated this section. Oxnard Beet Sugar Co. v. State, 73 Neb. 66, 105 N.W. 716 (1905).

**2. Laws not violating prohibition**

The Nebraska Hospital-Medical Liability Act neither implies nor mandates any state obligation or extension of credit for claims under the excess liability fund. Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).

Nebraska Clean Waters Commission Act did not violate this section. State ex rel. Meyer v. Duxbury, 183 Neb. 302, 160 N.W.2d 88 (1968).

Industrial Development Act of 1961 was sustained as constitutional under constitutional amendment notwithstanding this section. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

Statute creating pensions to firemen does not contravene this section. State ex rel. Haberlan v. Love, 89 Neb. 149, 131 N.W. 196 (1911).

**3. Miscellaneous**

This provision prevents the state or any of its governmental subdivisions from extending the state's credit to private enterprise; it is designed to prohibit the state from acting as a surety or guarantor of the debt of another. Japp v. Papio-Missouri River NRD, 273 Neb. 779, 733 N.W.2d 551 (2007).

The state's credit is inherently the power to levy taxes and involves the obligation of its general fund. Haman v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991).

Prohibition against loaning of credit applies to the state and all political subdivisions thereof. State ex rel. Beck v. City of York, 164 Neb. 223, 82 N.W.2d 269 (1957).

Section was intended to prevent the state from extending its credit to private enterprises. United Community Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

**XIII-4. Nonprofit enterprise development; powers of counties and municipalities.**

Notwithstanding any other provision in this Constitution, the Legislature may authorize any county, city, or village to acquire, own, develop, and lease or finance real and personal property, other than property used or to be used for sectarian instruction or study or as a place for devotional activities or religious worship, to be used, during the term of any revenue bonds issued, only by nonprofit enterprises as determined by law and to issue revenue bonds for the purpose of defraying the cost of acquiring and developing or financing such property by construction, purchase, or otherwise. Such bonds shall not become general obligation bonds of the governmental subdivision by which such bonds are issued, and such governmental subdivision shall have no authority to impose taxes for the payment of such bonds. Notwithstanding the provisions of Article VIII, section 2, of this Constitution, the acquisition, ownership, development, use, or financing of any real or personal property pursuant to the provisions of this section shall not affect the imposition of any taxes or the exemption therefrom by the Legislature pursuant to this Constitution. The acquiring, owning, developing, and leasing or financing of such property shall be deemed for a public purpose, but the governmental subdivision shall not have the right to acquire such property for the purposes specified in this section by condemnation. The principal of and interest on any bonds issued may be secured by a pledge of the lease and the revenue therefrom and by mortgage upon such property. No such governmental subdivision shall have the power to operate any such property as a business or in any manner except as the lessor thereof.

**Source:**Neb. Const. art. XIII, sec. 4 (2010); Adopted 2010, Laws 2010, LR295CA, sec. 1.

**XIV-1. Personnel; organization; discipline.**

The Legislature may provide for the personnel, organization, and discipline of the militia of the state.

**Source:**Neb. Const. art. XIII, sec. 1 (1875); Transferred by Constitutional Convention, 1919-1920, art. XIV, sec. 1; Amended 1972, Laws 1971, LB 621, sec. 1.

**XV-1. Official oath; refusal; disqualification.**

Executive and judicial officers and members of the legislature, before they enter upon their official duties shall take and subscribe the following oath, or affirmation. "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of Nebraska, and will faithfully discharge the duties of ..... according to the best of my ability, and that at the election at which I was chosen to fill said office, I have not improperly influenced in any way the vote of any elector, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, or any promise of office, for any official act or influence (for any vote I may give or withhold on any bill, resolution, or appropriation)." Any such officer or member of the legislature who shall refuse to take the oath herein prescribed, shall forfeit his office, and any person who shall be convicted of having sworn falsely to, or of violating his said oath

shall forfeit his office, and thereafter be disqualified from holding any office of profit or trust in this state unless he shall have been restored to civil rights.

**Source:**Neb. Const. art. XIV, sec. 1 (1875); Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 1.

**Annotation**

Violation of judicial oath aggravates offense of disregarding oath as a lawyer. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

County judge is required to take oath of constitutional officers. State ex rel. Nebraska State Bar Assn. v. Wiebusch, 153 Neb. 583, 45 N.W.2d 583 (1951).

Exact form of oath to be taken by executive and judicial officers and members of Legislature is prescribed. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

A judicial officer is required to take and subscribe to the oath prescribed by this section. Duffy v. State ex rel. Edson, 60 Neb. 812, 84 N.W. 264 (1900).

**XV-2. Official in default as collector and custodian of public money or property; disqualification; felon disqualified.**

No person who is in default as collector and custodian of public money or property shall be eligible to any office of trust or profit under the constitution or laws of this state. No person convicted of a felony shall be eligible to any such office unless he shall have been restored to civil rights.

**Source:**Neb. Const. art. XIV, sec. 2 (1875); Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 2; Amended 1972, Laws 1972, LB 503, sec. 1.

**Annotation**

The term "default" implies more than a mere civil liability, as there must exist a willful omission to account and pay over, with a corrupt intention, or such a flagrant disregard of duty as fairly to justify the inference that the conduct complained of was willful and corrupt. State ex rel. Brazda v. Marsh, 141 Neb. 817, 5 N.W.2d 206 (1942).

County treasurer is "collector and custodian" of public money within the meaning of this section. Section requires sufficient proof of such willful misconduct that the intent to misappropriate the trust funds in his hands as county treasurer is fairly inferable therefrom. State ex rel. Good v. Marsh, 125 Neb. 125, 249 N.W. 295 (1933).

Failure of clerk of district court to pay over money rendered him ineligible to hold office. State ex rel. Sorensen v. Farley, 123 Neb. 687, 243 N.W. 867 (1932).

Conviction of felony does not prevent former convict from suing for personal injuries. Bosteder v. Duling, 115 Neb. 557, 213 N.W. 809 (1927).

Public officer who mingles public funds with his own, and uses them as his own, is in default and ineligible to any office while the default exists. State ex rel. Broatch v. Moores, 56 Neb. 1,

76 N.W. 530 (1898).

**XV-3. Repealed 1986. Laws 1986, LR 318, sec. 1.**

**XV-4. Water a public necessity.**

The necessity of water for domestic use and for irrigation purposes in the State of Nebraska is hereby declared to be a natural want.

**Source:**Neb. Const. art. XIV, sec. 4 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 35; Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 4.

**Annotation**

**1. Natural want**
**2. Appropriation**
**3. Miscellaneous**

**1. Natural want**

Ground waters, whether they be percolating waters or underground streams, are a natural want in this state. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

This section declares the necessity of water for domestic use and for irrigation purposes to be a natural want. Hickman v. Loup River P. P. Dist., 176 Neb. 416, 126 N.W.2d 404 (1964).

Water for domestic use and for irrigation purposes is a natural want. State v. Birdwood Irrigation District, 154 Neb. 52, 46 N.W.2d 884 (1951).

**2. Appropriation**

Sections 46-2,107 through 46-2,119, permitting instream flow appropriations, do not offend this provision or Neb. Const. art. XV, section 5 or 6. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

Department of Water Resources initially determines right to an appropriation of water. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

Claim made and rejected that appropriation of surface and ground waters without compensation violated this section. Dischner v. Loup River P. P. Dist., 147 Neb. 949, 25 N.W.2d 813 (1947).

Rights of irrigation in Nebraska exist only as created and defined in constitutional provisions and statutes, and right of appropriation for irrigation is limited to natural streams. Drainage Dist. No. 1 of Lincoln v. Suburban Irr. Dist., 139 Neb. 460, 298 N.W. 131 (1941).

Water rights become vested as of date of appropriation and junior appropriators may use available water within the limits of their appropriation as long as the rights of senior appropriators are not injured or damaged. State ex rel. Cary v. Cochran, 138 Neb. 163, 292 N.W. 239 (1940).

By adoption of this and two succeeding sections, Nebraska recognized the principle of prior

appropriation of waters. Nebraska v. Wyoming, 325 U.S. 589 (1945).

**3. Miscellaneous**

The statutory law and judicial decisions of the Nebraska Supreme Court show a clear intention to enforce and maintain a rigid economy in the use of public waters in order to secure the greatest benefit possible from the waters available for irrigation. The state has the right, under both the police powers and the Nebraska Constitution, to regulate the use of natural rivers and streams so that waste is eliminated. In re Water Appropriation Nos. 442A, 461, 462 & 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

Riparian rights were not abolished by this section. Wassenburger v. Coffee, 180 Neb. 149, 141 N.W.2d 738 (1966).

Legislative conservation and control of water by reclamation districts is a public purpose. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

Constitution as well as statutes recognizes and encourages irrigation. Landowner may improve land by artificial application of water in reasonable and careful manner, without liability to adjoining owner except for negligence or willful act proximately causing damage. Spurrier v. Mitchell Irr. Dist., 119 Neb. 401, 229 N.W. 273 (1930).

**XV-5. Use of water dedicated to people.**

The use of the water of every natural stream within the State of Nebraska is hereby dedicated to the people of the state for beneficial purposes, subject to the provisions of the following section.

**Source:**Neb. Const. art. XIV, sec. 5 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 35; Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 5.

**Annotation**

Sections 46-2,107 through 46-2,119, permitting instream flow appropriations, do not offend this provision or Neb. Const. art. XV, section 4 or 6. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

The state has the right, under both the police powers and the Nebraska Constitution, to regulate the use of natural rivers and streams so that waste is eliminated. In re Water Appropriation Nos. 442A, 461, 462 & 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

Riparian rights were not abolished by this section. Wassenburger v. Coffee, 180 Neb. 149, 141 N.W.2d 738 (1966).

The right to appropriate water for irrigation purposes is limited to waters of natural streams. Rogers v. Petsch, 174 Neb. 313, 117 N.W.2d 771 (1962); Drainage Dist. No. 1 of Lincoln v. Suburban Irr. Dist., 139 Neb. 460, 298 N.W. 131 (1941).

Department of Water Resources has authority to make findings and orders for appropriation of water. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

Right to use of natural stream acquired prior to 1895 is a vested property right and may not be taken away by legislative action. City of Fairbury v. Fairbury Mill & Elevator Co., 123 Neb. 588, 243 N.W. 774 (1932).

Right to appropriate public waters of state for generating electrical energy is franchise, and taxable as such. Northern Nebraska Power Co. v. Holt County, 120 Neb. 724, 235 N.W. 92 (1931).

**XV-6. Right to divert unappropriated waters.**

The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest. Priority of appropriation shall give the better right as between those using the water for the same purpose, but when the waters of any natural stream are not sufficient for the use of all those desiring to use the same, those using the water for domestic purposes shall have preference over those claiming it for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes. Provided, no inferior right to the use of the waters of this state shall be acquired by a superior right without just compensation therefor to the inferior user.

**Source:**Neb. Const. art. XIV, sec. 6 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 35; Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 6.

**Annotation**



**1. Appropriation for domestic purposes**

Preference is given to appropriators using water for domestic and agricultural purposes. Cozad Ditch Co. v. Central Neb. Public Power & Irr. Co., 132 Neb. 547, 272 N.W. 560 (1937).

**2. Appropriation for irrigation**

The right to appropriate water for irrigation purposes is limited to water of natural streams. Rogers v. Petsch, 174 Neb. 313, 117 N.W.2d 771 (1962).

Rights of irrigation in Nebraska exist only as created and defined in constitutional provisions and statutes, and right of appropriation for irrigation is limited to natural streams. Drainage Dist. No. 1 of Lincoln v. Suburban Irr. Dist., 139 Neb. 460, 298 N.W. 131 (1941).

**3. Compensation**

Claim made and rejected that appropriation of surface and ground waters without compensation violated this section. Dischner v. Loup River P. P. Dist., 147 Neb. 949, 25 N.W.2d 813 (1947).

While those using waters for irrigation purposes are entitled to preference over those using it for power purposes, waters previously appropriated for power purposes may be taken and appropriated by a junior appropriator in point of time for irrigation only upon due and fair compensation. Loup River Public Power Dist. v. North Loup River Public Power & Irr. Dist.,

142 Neb. 141, 5 N.W.2d 240 (1942).

**4. State's powers**

This provision does not require that the director engage in a particular sequential consideration of the issues presented by an application. This provision is not self-executing. Central Platte NRD v. City of Fremont, 250 Neb. 252, 549 N.W.2d 112 (1996).

This provision is not self-executing, and it is, therefore, within the Legislature's province to pass statutes to delineate the public interest. In re Applications A-16027 et al., 242 Neb. 315, 495 N.W.2d 23 (1993).

Sections 46-2,107 through 46-2,119, permitting instream flow appropriations, do not offend this provision or Neb. Const. art. XV, section 4 or 5. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

The state has the right, under both the police powers and the Nebraska Constitution, to regulate the use of natural rivers and streams so that waste is eliminated. In re Water Appropriation Nos. 442A, 461, 462 & 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

Allowance or denial of application for appropriation of water was within jurisdiction of Department of Water Resources. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

**5. Miscellaneous**

The use of the term "divert" in this provision is not intended to prohibit nondiversionary appropriations, but to stress that the appropriative right is independent of riparian ownership. There is nothing in the Constitution which indicates that this provision is the exclusive means of acquiring a water right. The adoption of this provision did not do away with riparian rights. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

Unappropriated water is that water which is available for appropriation because it is not subject to an existing appropriative right. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

Riparian rights were not abolished by this section. Wassenburger v. Coffee, 180 Neb. 149, 141 N.W.2d 738 (1966).

Water rights become vested as of date of appropriation and junior appropriators may use available water within limits of their appropriation as long as rights of senior appropriators are not injured or damaged. State ex rel. Cary v. Cochran, 138 Neb. 163, 292 N.W. 239 (1940).

**XV-7. Use of water for power purposes.**

The use of the waters of the state for power purposes shall be deemed a public use and shall never be alienated, but may be leased or otherwise developed as by law prescribed.

**Source:**Neb. Const. art. XIV, sec. 7 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 36; Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 7.

**Annotation**

Right to appropriate public waters of state for generating electrical energy is franchise, and taxable as such. Northern Nebraska Power Co. v. Holt County, 120 Neb. 724, 235 N.W. 92 (1931).

**XV-8. Employment of women and children; minimum wage.**

Laws may be enacted regulating the hours and conditions of employment of women and children, and securing to such employees a proper minimum wage.

**Source:**Neb. Const. art. XIV, sec. 8 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 37; Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 8.

**XV-9. Controversies between employers and employees; industrial commission; appeals.**

Laws may be enacted providing for the investigation, submission, and determination of controversies between employers and employees in any business or vocation affected with a public interest and for the prevention of unfair business practices and unconscionable gains in any business or vocation affecting the public welfare. An Industrial Commission may be created for the purpose of administering such laws, and appeals shall be as provided by law.

**Source:**Neb. Const. art. XIV, sec. 9 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 38; Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 9; Amended 1990, Laws 1990, LR 8, sec. 1.

**Annotation**

The Court of Industrial Relations, now Commission of Industrial Relations, has jurisdiction over the University of Nebraska based on this section in conjunction with sections 48-801 to 48-838, R.R.S.1943. University Police Officers Union v. University of Nebraska, 203 Neb. 4, 277 N.W.2d 529 (1979).

Whenever there is an industrial dispute between U.N.L. and its employees, this section of the Constitution of Nebraska and the provisions of sections 48-801 to 48-838, R.R.S.1943, come into play towards the resolution of the dispute. University Police Officers Union v. University of Nebraska, 203 Neb. 4, 277 N.W.2d 529 (1979).

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. American Fed. of S., C. & M. Emp. v. Department of Public Institutions, 195 Neb. 253, 237 N.W.2d 841 (1976).

The power of the Legislature to create a body with power to deal with labor relations of governmental entities and departments does not depend upon Article XV, section 9, of the Nebraska Constitution, but it exists by virtue of Article III, section 1. Orleans Education Assn. v. School Dist. of Orleans, 193 Neb. 675, 229 N.W.2d 172 (1975).

This section is an independent part of the Constitution. The Court of Industrial Relations is an agency within the purview of the Administrative Procedures Act with certain legislative and

judicial powers. School Dist. of Seward Education Assn. v. School Dist. of Seward, 188 Neb. 772, 199 N.W.2d 752 (1972).

In the absence of evidence disclosing that it is confiscatory, an act regulating fees employment agencies may charge will be presumed to have been enacted on the factual situation contemplated by this section. State ex rel. Western Reference & Bond Assn. v. Kinney, 138 Neb. 574, 293 N.W. 393 (1940).

Home rule charter city selling gasoline and oil does not violate constitutional provisions relating to control of businesses affecting public welfare. Standard Oil Co. v. City of Lincoln, 114 Neb. 243, 207 N.W. 172 (1926).

**XV-10. Repealed 1934. Laws 1933, c. 94, sec. 1, p. 376.**

**XV-11. Repealed 1972. Laws 1971, LB 502, sec. 1.**

**XV-12. Removal of state capital.**

The seat of government of the state shall not be removed or relocated without the assent of a majority of the electors of the state voting thereupon, at a general election or elections, under such rules and regulations as to the number of elections and manner of voting and places to be voted for, as may be prescribed by law. Provided the question of removal may be submitted at such other general elections as may be provided by law.

**Source:**Neb. Const. (1875); Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 12.

**XV-13. Labor organizations; no denial of employment; closed shop not permitted.**

No person shall be denied employment because of membership in or affiliation with, or resignation or expulsion from a labor organization or because of refusal to join or affiliate with a labor organization; nor shall any individual or corporation or association of any kind enter into any contract, written or oral, to exclude persons from employment because of membership in or nonmembership in a labor organization.

**Source:**Neb. Const. art. XV, sec. 13 (1946); Adopted 1946, Initiative Measure No. 302, sec. 1.

**Annotation**

A public employer may not withhold pay raises otherwise determined to be granted to public employees in a given year solely on the basis that they were engaged in a labor dispute over a previous year's wages. Local No. 2088, Am. Fed. of State, County and Municipal Emp. v. County of Douglas, 208 Neb. 511, 304 N.W.2d 368 (1981).

A uniquely personal termination of employment would not violate this section. Nebraska Dept. of Roads Employees Assn. v. Department of Roads, 189 Neb. 754, 205 N.W.2d 110 (1973).

An employer's action or nonaction which results in cessation of an employee's employment is unlawful if the employer's motive is to discourage union membership or activity or in reprisal for such activity. Mid-Plains Education Assn. v. Mid-Plains Nebraska Tech. College, 189 Neb.

37, 199 N.W.2d 747 (1972).

Union shop agreements in railroad industry violated this section. Hanson v. Union Pacific R. R. Co., 160 Neb. 669, 71 N.W.2d 526 (1955).

Right to Work Amendment sustained as constitutional. Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 149 Neb. 507, 31 N.W.2d 477 (1948), affirmed in 335 U.S. 525 (1949).

As to railroad employees, Congress has provided for union shop, and congressional enactment prevails over this section. Railway Employees' Department v. Hanson, 351 U.S. 225 (1956).

Public policy that employment not be denied on basis of union membership includes public as well as private employment. American Federation of State, Co., & Mun. Emp. v. Woodward, 406 F.2d 137 (8th Cir. 1969).

**XV-14. Labor organization; definition.**

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

**Source:**Neb. Const. art. XV, sec. 14 (1946); Adopted 1946, Initiative Measure No. 302, sec. 2.

**XV-15. Labor organizations; amendment self-executing; laws to facilitate operation permitted.**

This article is self-executing and shall supersede all provisions in conflict therewith; legislation may be enacted to facilitate its operation but no law shall limit or restrict the provisions hereof.

**Source:**Neb. Const. art. XV, sec. 15 (1946); Adopted 1946, Initiative Measure No. 302, sec. 3.

**Annotation**

A public employer may not withhold pay raises otherwise determined to be granted to public employees in a given year solely on the basis that they were engaged in a labor dispute over a previous year's wages. Local No. 2088, Am. Fed. of State, County and Municipal Emp. v. County of Douglas, 208 Neb. 511, 304 N.W.2d 368 (1981).

**XV-16. Repealed 1972. Laws 1971, LB 688, sec. 1.**

**XV-17. Retirement and pension funds; investment.**

Notwithstanding section 3 of Article XIII or any other provision in the Constitution:

(1) The Legislature may provide for the investment of any state funds, including retirement or pension funds of state employees and Nebraska school employees in such manner and in such investments as it may by statute provide; and

(2) The Legislature may authorize the investment of retirement or pension funds of cities, villages, school districts, public power districts, and other governmental or political subdivisions in such manner and in such investments as the governing body of such city, village, school district, public power district and other governmental or political subdivision may determine but subject to such limitations as the Legislature may by statute provide.

**Source:**Neb. Const. art. XV, sec. 17 (1966); Adopted 1966, Laws 1965, c. 302, sec. 2(2), p. 852.

**XV-18. Governmental powers and functions; intergovernmental cooperation; Legislature may limit; merger or consolidation of counties or other local governments authorized.**

(1) The state or any local government may exercise any of its powers or perform any of its functions, including financing the same, jointly or in cooperation with any other governmental entity or entities, either within or without the state, except as the Legislature shall provide otherwise by law.

(2) The Legislature may provide for the merger or consolidation of counties or other local governments. No merger or consolidation of municipalities or counties shall occur without the approval of a majority of the people voting in each municipality or county to be merged or consolidated as provided by law. If the proposal is a merger or consolidation of one or more municipalities with one or more counties, the vote shall be tabulated in each municipality in the county or counties separately from the areas of the county or counties outside the boundaries of the municipalities. If the merger or consolidation is not approved by a majority of voters voting in the election in a municipality proposed to be merged or consolidated or the areas of the county or counties outside the boundaries of such municipality or municipalities, the proposed merger or consolidation shall be deemed rejected. Any merger or consolidation of local governments may be initiated by petition as provided by law. Annexation shall not be considered a merger or consolidation for purposes of this section. If the Legislature provides for the merger or consolidation of one or more municipalities with one or more counties, the Legislature shall provide for the reversal of the merger or consolidation. No such reversal shall occur without voter approval. The vote shall be tabulated in each municipality which is proposed to be created by the reversal separately from the areas outside the boundaries of the proposed municipalities. If the reversal is not approved by a majority of voters voting in the election in the area within the boundaries of any proposed municipality or the areas outside the proposed municipalities, the reversal shall be deemed rejected.

**Source:**Neb. Const. art. XV, sec. 18 (1972); Adopted 1972, Laws 1971, LB 604, sec. 1; Amended 1998, Laws 1998, LR 45CA, sec. 2.

**XV-19. Liquor licenses; municipalities and counties; powers.**

Notwithstanding any other provision of this Constitution, the governing bodies of municipalities and counties are empowered to approve, deny, suspend, cancel, or revoke retail and bottle club liquor licenses within their jurisdictions as authorized by the Legislature.

**Source:**Neb. Const. art. XV, sec. 19 (1992); Adopted 1992, Laws 1992, LR 9CA, sec. 1.

**XV-20. Omitted.**
**Source:Note:** Article XV, sections 20 to 24, of the Constitution of Nebraska, as adopted in 1992 by Initiative 408, has been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

**XV-21. Omitted.**
**Source:Note:** Article XV, sections 20 to 24, of the Constitution of Nebraska, as adopted in 1992 by Initiative 408, has been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

**XV-22. Omitted.**
**Source:Note:** Article XV, sections 20 to 24, of the Constitution of Nebraska, as adopted in 1992 by Initiative 408, has been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

**XV-23. Omitted.**
**Source:Note:** Article XV, sections 20 to 24, of the Constitution of Nebraska, as adopted in 1992 by Initiative 408, has been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

**XV-24. Omitted.**
**Source:Note:** Article XV, sections 20 to 24, of the Constitution of Nebraska, as adopted in 1992 by Initiative 408, has been omitted because of the decision of the Nebraska Supreme Court in Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

**XV-25. Right to hunt, to fish, and to harvest wildlife; public hunting, fishing, and harvesting of wildlife; preferred means of managing and controlling wildlife.**

The citizens of Nebraska have the right to hunt, to fish, and to harvest wildlife, including by the use of traditional methods, subject only to laws, rules, and regulations regarding participation and that promote wildlife conservation and management and that preserve the future of hunting, fishing, and harvesting of wildlife. Public hunting, fishing, and harvesting of wildlife shall be a preferred means of managing and controlling wildlife. This section shall not be construed to modify any provision of law relating to trespass or property rights. This section shall not be construed to modify any provision of law relating to Article XV, section 4, Article XV, section 5, Article XV, section 6, or Article XV, section 7, of this constitution.

**Source:**Neb. Const. art. XV, sec. 25 (2012); Adopted 2012, Laws 2012, LR40CA, sec. 1.

**XVI-1. How Proposed.**

The Legislature may propose amendments to this Constitution. If the same be agreed to by three-fifths of the members elected to the Legislature, such proposed amendments shall be entered on the journal, with yeas and nays, and published once each week for three consecutive weeks, in at least one newspaper in each county, where a newspaper is published, immediately preceding the next election of members of the Legislature or a special election called by the vote of four-fifths of the members elected to the Legislature for the purpose of submitting such proposed amendments to the electors. At such election said amendments shall be submitted to the electors for approval or rejection upon a ballot

separate from that upon which the names of candidates appear. If a majority of the electors voting on any such amendment adopt the same, it shall become a part of this Constitution, provided the votes cast in favor of such amendment shall not be less than thirty-five per cent of the total votes cast at such election. When two or more amendments are submitted at the same election, they shall be so submitted as to enable the electors to vote on each amendment separately.

**Source:**Neb. Const. art. XV, sec. 1 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 39; Transferred by Constitutional Convention, 1919-1920, art. XVI, sec. 1; Amended 1952, Laws 1951, c. 161, sec. 1, p. 638; Amended 1968, Laws 1967, c. 317, sec. 1, p. 848.

**Annotation**

Article III, sections 2 and 4, of the Constitution of the State of Nebraska set out some of the procedural requirements that must be met before an enactment initiated by a petition becomes a part of the statutory law of Nebraska or a part of the Nebraska Constitution. The people of Nebraska have specifically reserved the right to amend their Constitution themselves in sections 2 and 4 of Article III and in Article XVI, section 1, of the Nebraska Constitution. Omaha Nat. Bank v. Spire, 223 Neb. 209, 389 N.W.2d 269 (1986).

This section provides procedure for amending Nebraska Constitution. Cunningham v. Exon, 207 Neb. 513, 300 N.W.2d 6 (1980).

Constitutional provision should not be construed so as to defeat the will of the people, plainly expressed, and substantial compliance with its requirements is sufficient. Swanson v. State, 132 Neb. 82, 271 N.W. 264 (1937).

Constitutional amendment purporting to exclude schools of deaf and blind from jurisdiction of Board of Control was ineffective for failure to comply with requirements as to giving and publication of notice. State ex rel. Hall v. Cline, 118 Neb. 150, 224 N.W. 6 (1929).

By analogy to this section, publication of home rule charter amendment substantially complied with constitutional requirements. Sandell v. City of Omaha, 115 Neb. 861, 215 N.W. 135 (1927).

Canvass of vote upon adoption of constitutional amendment was properly made by State Canvassing Board. State ex rel. Oldham v. Dean, 84 Neb. 344, 121 N.W. 719 (1909).

Substantial compliance with constitutional limitations as to provisions for amendments thereto are sufficient. State ex rel. Thompson v. Winnett, 78 Neb. 379, 110 N.W. 1113 (1907).

Submission of a proposed constitutional amendment by the Legislature is not a legislative act. Weston v. Ryan, 70 Neb. 211, 97 N.W. 347 (1903).

**XVI-2. Convention.**

When three-fifths of the members elected to the Legislature deem it necessary to call a convention to revise, amend, or change this constitution, they shall recommend to the electors to vote at the next election of members of the Legislature, for or against a convention, and if a majority of the electors voting on the proposition, vote for a convention, the Legislature shall, at its next session provide by law

for calling the same; *Provided,* the votes cast in favor of calling a convention shall not be less than thirty-five per cent of the total votes cast at such election. The convention shall consist of not more than one hundred members, the exact number to be determined by the Legislature, and to be nominated and elected from districts in the manner to be prescribed by the Legislature. Such members shall meet within three months after their election, for the purpose aforesaid. No amendment or change of this constitution, agreed upon by such convention, shall take effect until the same has been submitted to the electors of the state, and adopted by a majority of those voting for and against the same.

**Source:**Neb. Const. art. XV, sec. 2 (1875); Transferred by Constitutional Convention, 1919-1920, art. XVI, sec. 2; Amended 1952, Laws 1951, c. 162, sec. 1, p. 640.

**Annotation**

Statute providing for election of delegates to constitutional convention was valid. Baker v. Moorhead, 103 Neb. 811, 174 N.W. 430 (1919).

**XVII-1. Terms; reference to members of the Legislature to include appointed and elected members.**

Whenever they shall appear in this Constitution, the terms members of the Legislature, elected members of the Legislature, or similar terms referring to the members of the Legislature, shall include appointed and elected members of the Legislature.

**Source:**Neb. Const. art. XVI, sec. 1 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 41; Transferred by Constitutional Convention, 1919-1920, art. XVII, sec. 1; Amended 1972, Laws 1971, LB 504, sec. 1.

**XVII-2. Repealed 1972. Laws 1971, LB 504, sec. 1.**

**XVII-3. Repealed 1972. Laws 1971, LB 504, sec. 1.**

**XVII-4. General election of state.**

The general election of this state shall be held on the Tuesday succeeding the first Monday of November in the year 1914 and every two years thereafter. All state, district, county, precinct, township and other officers, by the constitution or laws made elective by the people, except school district officers, and municipal officers in cities, villages and towns, shall be elected at a general election to be held as aforesaid. An incumbent of any office shall hold over until his successor is duly elected and qualified.

**Source:**Neb. Const. art. XVI, sec. 13 (1875); Amended 1912, Laws 1911, c. 226, sec. 2, p. 679; Transferred by Constitutional Convention, 1919-1920, art. XVII, sec. 4; Amended 1972, Laws 1971, LB 504, sec. 1.

**Annotation**

County officials must determine whether each petition signer was registered as a voter on or before the date on which the petition was required to be filed with the Secretary of State. State ex rel. Bellino v. Moore, 254 Neb. 385, 576 N.W.2d 793 (1998).

This section does not apply to judges selected and appointed under merit plan. Garrotto v. McManus, 185 Neb. 644, 177 N.W.2d 570 (1970).

General municipal election is not included. Allen v. Tobin, 155 Neb. 212, 51 N.W.2d 338 (1952).

This section is not applicable to election of delegates to constitutional convention. Baker v. Moorhead, 103 Neb. 811, 174 N.W. 430 (1919).

Under this section, no valid election for county commissioners could be held in the odd-numbered years. De Larm v. Van Camp, 98 Neb. 857, 154 N.W. 717 (1915); Calling v. Gilland, 97 Neb. 788, 151 N.W. 322 (1915); Best v. Moorhead, 96 Neb. 602, 148 N.W. 551 (1914).

Being within exception of this section, Legislature may provide that police magistrates in cities of second class be chosen at either municipal or general election. State ex rel. McDermott v. Reilly, 94 Neb. 232, 142 N.W. 923 (1913), rehearing denied 94 Neb. 238, 143 N.W. 200 (1913).

Word "district" refers to districts created by the Legislature as well as those created by the Constitution. State ex rel. Gordon v. Moores, 70 Neb. 48, 96 N.W. 1011 (1903).

**XVII-5. Terms of office of all elected officers.**

Unless otherwise provided by this Constitution or by law the terms of all elected officers shall begin on the first Thursday after the first Tuesday in January next succeeding their election.

**Source:**Neb. Const. art. XVI, sec. 14 (1875); Transferred by Constitutional Convention, 1919-1920, art. XVII, sec. 5; Amended 1972, Laws 1971, LB 504, sec. 1.

**Annotation**

This section does not apply to judges selected and appointed under merit plan. Garrotto v. McManus, 185 Neb. 644, 177 N.W.2d 570 (1970).

Governor takes office on first Thursday after first Tuesday in January in odd-numbered years. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

This section has reference only to officers who have a fixed term. Baker v. Moorhead, 103 Neb. 811, 174 N.W. 430 (1919).

Office of county judge was segregated from other officers elected within a county, and shows intent to classify as judicial and not county officer. Conroy v. Hallowell, 94 Neb. 794, 144 N.W. 895 (1913).

Election law of 1905 was invalid under this section. State ex rel. Polk v. Galusha, 74 Neb. 188, 104 N.W. 197 (1905).

An election provided for and required to take place by the Constitution may be held at the required time without special legislation providing therefor. State ex rel. Gordon v. Moores, 70 Neb. 48, 96 N.W. 1011 (1903).

**XVII-6. Transferred to Article III, section 30, Constitution of Nebraska.**

**XVII-7. Repealed 1972. Laws 1971, LB 504, sec. 1.**

**XVII-8. Repealed 1972. Laws 1971, LB 504, sec. 1.**

**XVII-9. Repealed 1998. Laws 1997, LR 17CA, sec. 3.**

**XVII-10. Sec. 10. (Failed to carry at election.)**
**Source:Note:** Legislative Bill 30, corresponding to Chapter 25 of the Session Laws of 1939 and consisting of three sections, proposed an amendment to the Constitution. Section 2 of the bill provided that an additional section should be inserted in Article XVII "to be known and numbered" as section 10. The amendment was rejected in the election of 1940. Legislative Bill 179, corresponding to Chapter 109 of the Session Laws for 1939, likewise proposed an amendment which was adopted. Section 2 of this bill provided that an additional section should be inserted in Article XVII "to be known and numbered" as section 11. For this reason there is no section 10 of Article XVII.

**XVII-11. Repealed 1972. Laws 1971, LB 504, sec. 1.**

**XVIII-1. Statement of intent.**

The people of the State of Nebraska want to amend the United States Constitution to establish term limits on Congress that will ensure representation in Congress by true citizen lawmakers. The President of the United States is limited by the XXII Amendment to the United States Constitution to two terms in office. Governors in forty states are limited to two terms or less. Voters have established term limits for over two thousand state legislators as well as over seventeen thousand local officials across the country. Nevertheless, Congress has ignored our desire for term limits not only by proposing excessively long terms for its own members but also by utterly refusing to pass an amendment for genuine congressional term limits. Congress has a clear conflict of interest in proposing a term limits amendment to the United States Constitution. A majority of both Republicans and Democrats in the 104th Congress voted against a constitutional amendment containing the term limits passed by a wide margin of Nebraska voters. The people, not Congress, should set term limits. We hereby establish as the official position of the citizens and State of Nebraska that our elected officials should enact by constitutional amendment congressional term limits of three terms in the United States House of Representatives and of two terms in the United States Senate.

The career politicians dominating Congress have a conflict of interest that prevents Congress from being what the founders intended, the branch of government closest to the people. The politicians have refused to heed the will of the people for term limits; they have voted to dramatically raise their own pay; they have provided lavish million-dollar pensions for themselves; and they have granted themselves numerous other privileges at the expense of the people. Most importantly, members of Congress have enriched themselves while running up huge deficits to support their spending. They have put the government nearly $5,000,000,000,000.00 (five trillion dollars) in debt, gravely threatening the future of our children and grandchildren.

The corruption and appearance of corruption brought about by political careerism is destructive to the proper functioning of the first branch of our representative government. Congress has grown

increasingly distant from the people of the states. The people have the sovereign right and compelling interest in creating a citizen Congress that will more effectively protect our freedom and prosperity. This interest and right may not effectively be served in any way other than that proposed by this initiative.

We hereby state our intention on behalf of the people of Nebraska, that this initiative lead to the adoption of the following amendment to the United States Constitution:

CONGRESSIONAL TERM LIMITS AMENDMENT TO

THE UNITED STATES CONSTITUTION

Section 1. No person shall serve in the office of United States Representative for more than three terms, but upon ratification of this amendment no person who has held the office of United States Representative or who then holds the office shall serve for more than two additional terms.

Section 2. No person shall serve in the office of United States Senator for more than two terms, but upon ratification of this amendment no person who has held the office of United States Senator or who then holds the office shall serve for more than one additional term.

Section 3. This article shall have no time limit within which it must be ratified to become operative upon the ratification of the legislatures of three-fourths of the several states.

Therefore, we the people of the State of Nebraska, have chosen to amend the Constitution of Nebraska to inform voters regarding incumbent and nonincumbent federal and state candidates' support for the congressional term limits amendment provided for in this section.

**Source:**Neb. Const. art. XVIII, sec. 1 (1996); Adopted 1996, Initiative Measure No. 409.

**XVIII-2. Instruction to members of congressional delegation; ballot notation; when.**

(1) We, the voters of Nebraska, hereby instruct each member of our congressional delegation to use all of his or her delegated powers to pass the congressional term limits amendment set forth in Article XVIII, section 1, of this Constitution.

(2) All primary and general election ballots shall have printed the information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" adjacent to the name of any United States Senator or United States Representative who:

(a) Fails to vote in favor of the proposed congressional term limits amendment set forth in Article XVIII, section 1, of this Constitution, when brought to a vote;

(b) Fails to second such proposed congressional term limits amendment if it lacks for a second before any proceeding of the legislative body;

(c) Fails to propose or otherwise bring to a vote of the full legislative body such proposed congressional term limits amendment if it otherwise lacks a legislator who so proposes or brings to a vote of the full legislative body such proposed congressional term limits amendment;

(d) Fails to vote in favor of all votes bringing such proposed congressional term limits amendment before any committee or subcommittee of the respective house upon which he or she serves;

(e) Fails to reject any attempt to delay, table, or otherwise prevent a vote by the full legislative body of such proposed congressional term limits amendment;

(f) Fails to vote against any proposed constitutional amendment that would establish longer term limits than those in the proposed congressional term limits amendment set forth in Article XVIII, section 1, of

this Constitution, regardless of any other actions in support of such proposed congressional term limits amendment;

(g) Sponsors or cosponsors any proposed constitutional amendment or law that would increase term limits beyond those in the proposed congressional term limits amendment set forth in Article XVIII, section 1, of this Constitution; or

(h) Fails in any way to ensure that all votes on congressional term limits are recorded and made available to the public.

(3) The information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" shall not appear adjacent to the names of incumbent candidates for Congress if the congressional term limits amendment set forth in Article XVIII, section 1, of this Constitution, is before the states for ratification or has become part of the United States Constitution.

**Source:**Neb. Const. art. XVIII, sec. 2 (1996); Adopted 1996, Initiative Measure No. 409.

**Annotation**

This section violates Article V of the U.S. Constitution and is an unconstitutional infringement on the right to vote. Miller v. Moore, 169 F.3d 1119 (8th Cir. 1999).

**XVIII-3. Nonincumbent candidates; Term Limits Pledge; ballot notation; when.**

(1) Nonincumbent candidates for the United States Senate, the United States House of Representatives, and the Legislature should be given an opportunity to take a "Term Limits Pledge" regarding term limits each time they file to run for such offices. Any such person who declines to take the "Term Limits Pledge" shall have the information "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed adjacent to his or her name on every primary and general election ballot.

(2) The "Term Limits Pledge" shall be offered to nonincumbent candidates for the United States Senate, the United States House of Representatives, and the Legislature until a constitutional amendment which limits the number of terms of United States Senators to no more than two and United States Representatives to no more than three has become part of our United States Constitution.

(3) The "Term Limits Pledge" that each nonincumbent candidate, set forth in subsections (1) and (2) of this section, shall be offered is as follows: I support term limits and pledge to use all my legislative powers to enact the proposed constitutional amendment to the United States Constitution set forth in Article XVIII, section 1, of this Constitution. If elected, I pledge to vote in such a way that the designation "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" will not appear adjacent to my name.

..... Signature of Candidate

**Source:**Neb. Const. art. XVIII, sec. 3 (1996); Adopted 1996, Initiative Measure No. 409.

**Annotation**

This section is an unconstitutional infringement on the right to vote. Miller v. Moore, 169 F.3d 1119 (8th Cir. 1999).

**XVIII-4. Instruction to members of the Legislature; ballot notation; when.**

(1) We the voters of Nebraska, hereby instruct each member of the Legislature to use all of his or her delegated powers to pass an application pursuant to Article V of the United States Constitution as set forth in subsection (2) of this section, and to ratify, if proposed, the congressional term limits amendment set forth in Article XVIII, section 1, of this Constitution.

(2) Application: We, the people and the Legislature, due to our desire to establish term limits on Congress, hereby make application to Congress, pursuant to our power under Article V of the United States Constitution, to call a convention for proposing amendments to the United States Constitution.

(3) All primary and general election ballots shall have the information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" printed adjacent to the name of any respective member of the Legislature who:

(a) Fails to vote in favor of the application set forth in subsection (2) of this section when brought to a vote;

(b) Fails to second the application if it lacks for a second;

(c) Fails to vote in favor of all votes bringing the application before any committee or subcommittee upon which he or she serves;

(d) Fails to propose or otherwise bring to a vote of the full legislative body the application if it otherwise lacks a legislator who so proposes or brings to a vote of the full legislative body the application;

(e) Fails to vote against any attempt to delay, table, or otherwise prevent a vote by the full legislative body on the application;

(f) Fails in any way to ensure that all votes on the application are recorded and made available to the public;

(g) Fails to vote against any change, addition, or modification to the application;

(h) Fails to vote in favor of the congressional term limits amendment if it is sent to the states for ratification; or

(i) Fails to vote against any term limits amendment with longer terms if such an amendment is sent to the states for ratification.

(4) The information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" shall not appear adjacent to the names of candidates for the Legislature as required by subdivisions (3)(a) through (3)(g) of this section if the State of Nebraska has made an application to Congress for a convention for proposing amendments to the United States Constitution pursuant to this initiative and such application has not been withdrawn or the congressional term limits amendment set forth in Article XVIII, section 1, of this Constitution, has been submitted to the states for ratification.

(5) The information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" shall not appear adjacent to the names of candidates for the Legislature as required by subdivisions (3)(h) and (3)(i) of this section if the State of Nebraska has ratified the proposed congressional term limits amendment set forth in Article XVIII, section 1, of this Constitution.

(6) The information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" shall not appear adjacent to the names of candidates for the Legislature as required by subdivisions (3)(a) through (3)(i) of this section if the proposed congressional term limits amendment set forth in Article XVIII, section 1, of this Constitution, has become part of the United States Constitution.

**Source:**Neb. Const. art. XVIII, sec. 4 (1996); Adopted 1996, Initiative Measure No. 409.

**Annotation**

This section violates Article V of the U.S. Constitution and is an unconstitutional infringement on the right to vote. Miller v. Moore, 169 F.3d 1119 (8th Cir. 1999).

**XVIII-5. Ballot notation; Secretary of State; duties; appeal.**

(1) The Secretary of State shall be responsible to make an accurate determination as to whether a candidate for the United States Senate, the United States House of Representatives, or the Legislature shall have placed adjacent to his or her name on the election ballot the information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS."

(2) The Secretary of State shall consider timely submitted public comments prior to making the determination required in subsection (1) of this section.

(3) The Secretary of State, in accordance with subsection (1) of this section, shall determine and declare what information, if any, shall appear adjacent to the name of each incumbent member of Congress if he or she was to be a candidate in the next election. In the case of United States Representatives and United States Senators, this determination and declaration shall be made in a fashion necessary to ensure the orderly printing of primary and general election ballots with allowance made for all legal action provided in subsections (5) and (6) of this section, and shall be based upon his or her action during his or her current term of office and any action taken in any concluded term, if such action was taken after the determination and declaration was made by the Secretary of State in a previous election. In the case of incumbent members of the Legislature, this determination and declaration shall be made not later than thirty days after the end of the regular session following each general election, and shall be based upon legislative action in the previous regular session.

(4) The Secretary of State shall determine and declare what information, if any, will appear adjacent to the names of nonincumbent candidates for Congress and the Legislature, not later than five business days after the deadline for filing for the office.

(5) If the Secretary of State makes the determination that the information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" shall not be placed on the ballot adjacent to the name of a candidate for the United States Senate, the United States House of Representatives, or the Legislature, any elector may appeal such decision within five business days to the Nebraska Supreme Court as an original action or shall waive any right to appeal such decision; in which case the burden of proof shall be upon the Secretary of State to demonstrate by clear and convincing evidence that the candidate has met the requirements set forth in this article and therefore should not have the information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed on the ballot adjacent to the candidate's name.

(6) If the Secretary of State determines that the information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" shall be placed on the ballot adjacent to a candidate's name, the candidate or any elector may appeal such decision within five business days to the Nebraska Supreme Court as an original action or shall waive any right to appeal such decision; in which case the burden of proof shall be upon the candidate or any elector to demonstrate by clear and convincing evidence that the candidate should not have the information "DISREGARDED VOTERS INSTRUCTION ON TERM LIMITS" or "DECLINED TO

PLEDGE TO SUPPORT TERM LIMITS" printed on the ballot adjacent to the candidate's name.

(7) The Nebraska Supreme Court shall hear the appeal provided for in subsection (5) of this section and issue a decision within sixty days. The Nebraska Supreme Court shall hear the appeal provided for in subsection (6) of this section and issue a decision not later than sixty-one days before the date of the election.

**Source:**Neb. Const. art. XVIII, sec. 5 (1996); Adopted 1996, Initiative Measure No. 409.

**Annotation**

> This section violates Article V of the U.S. Constitution and is an unconstitutional infringement on the right to vote. Miller v. Moore, 169 F.3d 1119 (8th Cir. 1999).

**XVIII-6. Automatic repeal; when.**

At such time as the congressional term limits amendment set forth in Article XVIII, section 1, of this Constitution, has become part of the United States Constitution, sections 1 through 6 of this article automatically shall be repealed.

**Source:**Neb. Const. art. XVIII, sec. 6 (1996); Adopted 1996, Initiative Measure No. 409.

**XVIII-7. Legal challenge; jurisdiction.**

Any legal challenge to this initiative shall be filed as an original action before the Nebraska Supreme Court.

**Source:**Neb. Const. art. XVIII, sec. 7 (1996); Adopted 1996, Initiative Measure No. 409.

**XVIII-8. Severability.**

If any portion, clause, or phrase of this initiative is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions, clauses, and phrases shall not be affected, but shall remain in full force and effect.

**Source:**Neb. Const. art. XVIII, sec. 8 (1996); Adopted 1996, Initiative Measure No. 409.