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Municipal Home Rule in California: I

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EVER since the organization of state government in this country the view has been widely, if not universally entertained that not all the governmental powers exercised in the state should be vested in or exercised directly by the state legislature itself; that some governmental powers are of much greater concern to particular localities within the state than to the state as a whole and that such powers should, therefore, be delegated to cities and other local subdivisions to be exercised as they see fit. As a result, cities have been created in every state of the union and vested with governmental powers in matters of primary concern to such cities.¹ The question of what matters are of primary concern to cities and the question of the extent to which, if any, the state legislature should be permitted to interfere with such matters are and for many years have been perhaps the most important and vexing questions in the law of municipal corporations.

It was long the accepted view that the extent to which governmental powers, whatever their character, should be delegated to and exercised by such corporations was a matter entirely within the discretion of the state legislature and that such powers could be granted, modified or withdrawn, and the action of the local subdivision superseded or interfered with to whatever extent the legislature saw fit.² Cities held and exercised their powers at the mere sufferance of the state legislature. The only limitation on the legislature in this respect was its own sense of self-restraint. That sense of self-restraint was

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¹ This article will be confined to a discussion of the law relating to cities. Principles or authorities applicable to counties, districts or other local subdivisions will be referred to only where equally applicable to cities.

² DILLON, MUNICIPAL CORPORATIONS (1872) 71-72.

likely to be much less compelling in dealing with matters of local concern than in matters of state-wide concern, for in the former case there was but limited room for the operation of the safeguard embodied in the principle that "the legislature acts upon its constituents".³ When the legislature passes laws relating to the affairs of some local subdivision of a state such as a city, it is in reality acting on only a part of its constituents—frequently a very small part—in a matter primarily affecting only them and in which the great majority of its constituents are only slightly concerned or interested. To illustrate, if the legislature should pass a law increasing the rate of the California personal income tax, most of the citizens of the state would have an interest in that matter and presumably would make their views known and influence felt on the members of the state legislature. On the other hand, if the legislature should pass a law (assuming for purposes of the illustration, its power so to do) increasing the salaries of the mayor and council of the City of Berkeley to double what they formerly were, the people of Los Angeles, Sacramento or other parts of the state, who together control a majority of the representatives in the state legislature, would not be expected to make any serious objection to such conduct of their representatives, since the burden of increased taxation resulting therefrom would fall solely on the taxpayers of Berkeley.

There was obviously latent in the principle of legislative supremacy an opportunity, if not an actual incentive for arbitrary action and exploitation—an opportunity for delivering the government of cities and other local subdivisions into the hands of political spoils-men in the state legislature—an opportunity for taxing and governing cities by representatives of other parts of the state, having no acquaintance with, interest in, or responsibility to the people of the locality primarily affected. As long as cities were small and their activities few, the temptation for the legislature to interfere was also small, and the cases of arbitrary interference not frequent enough to arouse a great deal of resentment on the part of cities.⁴ At least, there was no great public outcry against legislative interference in

³ See Marshall, C. J., in *McCulloch v. Maryland* (1819) 17 U. S. (4 Wheat.) 316, 428.

⁴ In *Mayor of New York v. Ordrenan* (N. Y. 1815) 12 Johns. 122, 125, it was said, "Though the act of 1806 contains no recitals, stating that it was passed on the application of the corporation of New York, yet we must presume that it was so passed, *it being almost the invariable course of proceeding, for the legislature not to interfere in the internal concerns of a corporation, without its consent, signified under its common seal.*" (Italics added.)

the earlier years. The tremendous growth and importance of cities in this country during the latter part of the nineteenth century increased that temptation and resulted in greatly accelerating the frequency and degree of interference by state legislatures in matters of primary concern to cities.⁵

The result was the gradual emergence of a new view—that restraints should be placed upon the power of the legislature thus to interfere—that governmental regulations in matters primarily of local and not state-wide concern should be made by those primarily interested in and affected by such regulations, without dictation or interference of any kind by the state legislature. Thus some courts began to discover in state constitutions implied limitations on the power of the legislature to interfere—limitations on laws said to be contrary to “the spirit” of the constitution, although concededly violating no express provision thereof. They discovered that there was “an inherent right of local self-government” which was beyond legislative control;⁶ that the familiar principle of “no taxation without representation” was an inherent natural right which operated to condemn legislative attempts to impose taxes on the inhabitants of cities for municipal purposes.⁷ The weakness of the premises on which this view was based led to its rejection by the great weight of

⁵ MCBAIN, *THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE* (1916) 5 *et seq.*

⁶ See McBain, *The Doctrine of an Inherent Right of Local Self-Government* (1916) 16 *COL. L. REV.* 190, 299, where the origin, spread and ultimate repudiation of this doctrine by most courts is set forth. For a briefer account, see MCBAIN, *op. cit. supra* note 5, at 12-15. The doctrine would seem still to prevail, or at least has not yet been definitely disapproved in Michigan, Iowa or Indiana. See cases cited in MCBAIN, *ibid.* at 13, nn. 2, 3, 4 and 5. Montana and Oklahoma have also given recent approval to the doctrine of an inherent right of local self government. *State v. Arnold* (1935) 100 *MONT.* 346, 49 *P.* (2d) 976 (condemning on this ground a law requiring cities to operate fire departments on a three-platoon basis and to pay firemen minimum wages); *Thomas v. Reid* (1930) 142 *OKLA.* 38, 285 *PAC.* 92 (condemning on this ground an act requiring the consent of three-fifths of the voters at a bond election instead of a majority); *City of Ardmore v. Excise Board* (1932) 155 *OKLA.* 126, 8 *P.* (2d) 2 (condemning on this ground a law making city taxes subject to review by a county board); *Bartlesville Water Co. v. Brann* (1933) 166 *OKLA.* 251, 27 *P.* (2d) 345, 347 (same). See (1930) 44 *HARV. L. REV.* 133. See also the discussion in Dodd, *Extra-Constitutional Limitations Upon Legislative Power* (1931) 40 *YALE L. J.* 1188, 1204.

⁷ *Marr v. Enloe* (1830) 9 *TENN.* (1 *YERG.*) 452, 454, condemning act conferring taxing power on officers not elected by people of the county taxed, on the ground that “Representation and taxation are, of necessity, in our government inseparable, as they must be in every free country . . . Our fathers fought, conquered, and separated from Great Britain to poor purpose, to preserve the principle, ‘that taxation without representation was tyranny’, if we are at this short day compelled to submit to its exercise in practice, by a few individuals in each county.” As will hereafter appear in greater detail

authority.⁸ Moreover, attempts to invoke the due process or contract clauses of the federal and state constitutions were equally unsuccessful.⁹ The need for protection against legislative encroachment proved so great, however, that a movement to place tangible and definite constitutional restraints on the power of state legislatures in this regard followed—the familiar “Home Rule” movement—which resulted in the writing into many state constitutions of express barriers of various sorts against legislative interference with the affairs of cities¹⁰—in effect resulting in the establishment of a federal system within the state.¹¹

All of the above stages of development have been closely mirrored in the history of the law of municipal corporations in California. After a period of legislative supremacy, the courts of this state had begun to recognize an inherent right of local self-government for cities. The further need for such recognition was largely obviated, however, by the incorporation into the present California Constitution of specific limitations on the power of the legislature to interfere with the affairs of cities. In fact, California appears to have gone further than any other state in setting up constitutional guarantees to cities of the right of local self-government. The precise scope of these guarantees has become so shadowy and vague, however, and the judicial decisions attempting to define that scope so confused, that it is in many cases impossible to say with any degree of assurance whether a given city is or is not subject to laws passed by the legislature and purporting to be applicable to them, or whether, if applicable such laws are constitutional.

This confusion and uncertainty would seem to be a very serious matter. According to the 1940 census, 4,981,252 of the 6,907,387 people of the State of California, or slightly over 72%, resided in the 283 incorporated cities having an actively functioning municipal gov-

a like holding was made in *Hoagland v. Sacramento* (1877) 52 Cal. 142, and it was assumed in *Gadd v. McGuire* (1924) 69 Cal. App. 347, 362, 231 Pac. 754, 760, that the California constitution forbids taxation of cities except by their own local representatives.

⁸ See *McBAIN, op. cit. supra* note 5, at 15; *Board of Trustees v. Schupp* (1928) 223 Ky. 269, 3 S. W. (2d) 606; *Moore v. Election Com'rs of Cambridge* (Mass. 1941) 35 N. E. (2d) 222, 234; *Providence v. Moulton* (1932) 52 R. I. 236, 160 Atl. 75, and cases there cited; 1 *DILLON, MUNICIPAL CORPORATIONS* (5th ed. 1911) 154.

⁹ *Trenton v. New Jersey* (1923) 262 U. S. 182; *County of Alameda v. Janssen* (1940) 16 Cal. (2d) 276, 105 P. (2d) 11, and cases there cited. And see Note (1938) 116 A. L. R. 1037.

¹⁰ See *McBAIN, op. cit. supra* note 5, cs. 2, 3, 4.

¹¹ *Cf. Marson v. Philadelphia* (Pa. 1941) 21 A. (2d) 228, 230.

ernment. Of these, 4,038,034, or over 58% of the total population of the state, resided in 55 cities¹² operating under freeholders charters adopted pursuant to sections 8 and 8½ of article XI of the constitution; 900,368 persons, or 13% of the total population of the state, resided in 224 cities which, pursuant to the Municipal Corporation Bill of 1883¹³ had adopted the charter designated therein for cities of the Sixth Class;¹⁴ 38,558 persons resided in two cities which, pursuant to the Municipal Corporation Bill of 1883 had adopted the charter designated therein for cities of the Fifth Class;¹⁵ and 4,292 persons resided in the two cities still acting under special legislative charters granted prior to the adoption of the constitution of 1879.¹⁶

Under the provisions of the present constitution all of these cities have been guaranteed a measure of freedom from legislative inter-

¹² For a list of the 55 freeholder charter cities of California and a citation to the charter of each, see Appendix A.

¹³ Cal. Stats. 1883, p. 93, CAL. GEN. LAWS, Act 5233.

¹⁴ For a list of the 224 active cities incorporated under the Municipal Corporation Bill as cities of the Sixth Class, and the date of incorporation and 1940 population of each, see Appendix B.

¹⁵ Woodland, Yolo County, with a 1940 population of 6637, incorporated as a Fifth Class city in 1890, and Santa Ana, Orange County, with 31,921, incorporated as a Fifth Class city in 1888, after having previously been incorporated as a city of the Sixth Class in 1886. Woodland was a special charter city from 1874 to 1890.

One of the anomalies of California Municipal Corporation Law is that notwithstanding the continued appearance in the general laws of elaborate provisions for the government of cities of the First, Second, Third and Fourth Classes under the Municipal Corporation Bill, there are today no cities of any of these classes in existence and accordingly there is nothing on which these elaborate provisions now operate. In fact there have never been at any time in the history of the state, any cities incorporated as cities of any of the first three classes under the Municipal Corporation Bill. From 1884 to 1889, Stockton was incorporated and acting under the Municipal Corporation Bill as a city of the Fourth Class, but there have been no other such Fourth Class cities. And thirteen freeholders charter cities were previously incorporated under the Municipal Corporation Bill as cities of the Fifth Class, *viz.*, Alameda (1884-1907); Bakersfield (1898-1915); Chico (1895-1923); Fresno (1885-1901); Oroville (1906-1933); Petaluma (1884-1911); Pomona (1888-1911); San Bernardino (1886-1905); San Buenaventura (1905-1933); San Diego (1886-1889); Santa Monica (1902-1907)—a Sixth Class Municipal Corporation Bill city from 1886-1902; Tulare (1888-1923) and Visalia (1900-1923).

¹⁶ Alviso, Santa Clara County, with a 1940 population of 677 is still operating under a special legislative charter granted by Cal. Stats. 1852, p. 222. Gilroy, Santa Clara County, with a 1940 population of 3615 is still operating under a charter granted by Cal. Stats. 1869-70, p. 263. Special acts incorporating Hornitos, Mariposa County; Markleeville, Alpine County; and Meadow Lake, Nevada County (see Appendix C) are still outstanding, but there does not appear to be any city government now functioning in any of the latter places.

ference in affairs of primary concern to them—a degree of local self-government or municipal home rule. As will hereafter appear, this guarantee varies very greatly according to whether a city is a freeholders charter city, a Municipal Corporation Bill city or a pre-1879 special charter city. Moreover, it also varies among different freeholders charter cities. As a matter of fact the latter is the source of perhaps the greatest confusion in this field, as will also appear hereafter.

The situation would seem to warrant a study of the question of municipal home rule in California—a study of the extent to which legislative interference in matters affecting cities is or is not proscribed by the provisions of the present constitution of California—and moreover, the extent to which statutes purporting on their face to apply to all or some designated cities are in fact applicable thereto.

A necessary prerequisite to a thorough understanding of the provisions of the present constitution is a knowledge and understanding of the experience under the 1849 constitution, for the present provisions were designed in considerable part to mitigate or eliminate evils which had previously grown up. Moreover, they actually operated for many years after 1879 on the system of city government set up in the pre-1879 days. It is proposed to proceed, first, therefore to an examination of those days.

THE PERIOD FROM 1849 TO 1879

At the time the framers of the California constitution of 1849 assembled in convention, the state had a population of approximately 90,000 and the four largest cities were San Francisco, Sacramento, Marysville and Los Angeles, with approximate populations of 35,000; 7,000; 4,500; and 1,600, respectively.¹⁷ Doctrines of local

¹⁷ A much better perspective is achieved if the population of the leading California cities at the various pertinent dates mentioned herein is kept in mind.

In 1860 the largest cities and their populations were (1) San Francisco, 56,802; (2) Sacramento, 13,785; (3) Marysville, 4,740; (4) Los Angeles, 4,385; (5) Stockton, 3,679; (6) Oakland, 1,543.

In 1870 they were (1) San Francisco, 149,473; (2) Sacramento, 16,283; (3) Oakland, 10,500; (4) Stockton, 10,066; (5) San Jose, 9,089; (6) Los Angeles, 5,728; (7) Marysville, 4,738; (8) Santa Cruz, 2,561 and (9) San Diego, 2,300.

In 1880 the leading cities were (1) San Francisco, 233,959; (2) Oakland, 34,555; (3) Sacramento, 21,420; (4) San Jose, 12,567; (5) Los Angeles, 11,183; (6) Stockton, 10,282; (7) Vallejo, 5,987; (8) Alameda, 5,708; (9) Marysville, 5,012; (10) Santa Cruz, 3,898; (11) Santa Rosa, 3,616; (12) Santa Barbara, 3,460; (13) Eureka, 2,639; (14) San Diego, 2,637; San Bernardino, 1,673; (16) Fresno, 1,112.

self-government or immunity of cities from legislative control were not generally in vogue elsewhere, and there was no reason to expect that the framers would devote much of their time to a consideration of restricting the power of the legislature to deal with municipal corporations. And indeed, practically no consideration was given to this matter; the few provisions dealing with cities were adopted virtually without debate.¹⁸

Nevertheless, the 1849 constitution did recognize the advisability of delegating to cities and villages some power to regulate and administer their own affairs, for section 37 of article IV enjoined upon the legislature "the duty" of providing "for the organization of cities and incorporated villages". But there was no intimation either here or elsewhere in the constitution that the power of the legislature over such city governments as it chose to establish was less than plenary. On the contrary, far from showing any intention to curb legislative interference with municipal government, the 1849 constitution seems rather to have shown an intention to invite such interference. Thus section 31 of article IV provided that "Corporations may be formed, under general laws; but shall not be created by special act, *except for municipal purposes*," the inference being clear that municipal corporations could be created by special act. And there were no restrictions in the constitution against legislating with respect to municipal corporations by special act. Again, section 37 of article IV indicated that the framers showed a greater distrust of local governments than they did of the state legislature, for it made it the "duty" of the state legislature to restrict the power of cities and villages to tax, assess, borrow money, contract debts, and loan their credit, "so as to prevent abuses in assessments and contracting debts by such municipal corporations".

In obeying the mandate of the 1849 constitution to provide for the organization of cities and villages, the legislature recognized the advisability of committing somewhat extensive power over local affairs to cities, and accordingly passed numerous statutes giving such power. Such statutes were mostly in the form of special acts creating cities and granting charters providing for local self-government in certain specified matters. Usually these special charters were modeled on the federal and state constitutions, creating a city gov-

¹⁸ BROWNE, REPORT OF THE DEBATES IN THE CONVENTION OF CALIFORNIA ON THE FORMATION OF THE STATE CONSTITUTION IN SEPTEMBER AND OCTOBER, 1849 (1850) 126-128, 136.

ernment of three branches, namely, executive, legislative and judicial, and conferring specified powers on each.¹⁹ In all, 133 charters of this kind were granted to 71 cities and towns between 1849 and 1879.²⁰

While the special charters of this period granted to the respective cities extensive powers of local self-government,²¹ at the same time

¹⁹ The practice seems to have been almost universal to call the executive the mayor, at least in larger cities and towns. In smaller towns there was no provision for a mayor. Although the board of trustees elected one of their number "president", he does not appear to have been vested with executive powers. The legislative body was usually called "the council" in the larger cities and "the board of trustees" in the smaller cities and towns. The judicial power was usually vested in the "recorder" who presided over a "recorder's court" or the mayor, who presided over a "mayor's court". Later on, police courts and city justice courts were set up. These courts had jurisdiction over violations of city ordinances and also over some small criminal, and sometimes small civil matters, arising in the city. At first the practice was to incorporate a city as "The Mayor, Recorder and Common Council of _____" or "The Mayor and Common Council of _____" according to whether the city had a recorder's court or a mayor's court. Later the larger cities were incorporated as "The city of _____" and the smaller as "The town of _____".

San Francisco, from 1856 to the present time has had a consolidated city and county, with a mayor, board of supervisors, and a police court (a municipal court was set up in 1930 which superseded the police court). From 1858 to 1863; Sacramento was a consolidated city and county with a mayor, board of supervisors and city justice court. There have been no other examples of consolidated city and county governments in the history of the state.

²⁰ See Appendix C, for a list of these cities, and the citation of the statutes granting their charters.

²¹ The powers most frequently granted in these charters were as follows: (1) to make ordinances and provide penalties for the breach thereof; (2) to prevent and remove nuisances; (3) to license and regulate various kinds of business and other activities; (4) to lay out, open, extend, grade, alter, widen or regulate streets; (5) to construct and maintain public buildings for the use of the city, such as a city hall, prisons, jails, houses of correction, hospitals, poor houses and school houses; (6) to construct and maintain bridges, levees, culverts, sewers, wells, cisterns, sidewalks; (7) to provide for public parks and squares; (8) to establish wharves and to improve its waterfront; (9) to acquire, or construct and to maintain water works, and gas works to supply inhabitants with water and gas; (10) to organize, support and maintain a system of common schools in the city; (11) to establish public libraries; (12) to establish, regulate and maintain a police or fire department; (13) to license or establish ferries or bridges; (14) to fix rates of wharfage, and of hackney carriages, wagons, carts, drays and omnibuses; (15) to provide for the lighting of city streets; (16) to regulate, restrain or suppress barrooms, theatres, shows, places of amusement, billiard tables, tippling houses, saloons, gambling houses or bawdy houses; (17) to establish and regulate markets; (18) to regulate the weight, quality and price of bread; (19) to regulate and prevent manufacturing or other activities likely to produce fires, such as storage of gun-powder, tar, pitch, resin and other combustible materials; (20) to establish fire limits and prevent the erection of wooden buildings therein; (21) to regulate the construction of buildings, sheds, awnings, partition walls and fences; (22) to control and regulate slaughterhouses; (23) to remove from the inhabited parts of the city all slaughterhouses, haystacks, forges, blacksmith shops,

such charters sharply curtailed the scope of their activities by imposing severe limitations on the power to borrow money, incur indebtedness, and to levy taxes.²² Such charters did not purport to confer

brick kilns and hog pens; (24) to make local assessments of property benefitted for public improvements; (25) to provide for the support of the indigent sick, blind and insane; (26) to remove obstructions from, grade the banks of, to facilitate drainage or to widen, straighten or deepen the channel of rivers; (27) to protect the city from overflow; (28) to prevent animals from running at large in the streets of a city; (29) to appropriate money for any item of indebtedness; (30) to fund the floating debt of the city; (31) to subscribe to stock of railroads; (32) to provide for the conducting of city elections; (33) to fix and pay salaries of city officers; (34) to prevent or restrain any riot, noise or disturbance or disorderly conduct; (35) a general power to pass such other ordinances for the regulation and police of the city as it shall deem necessary; (36) borrow money, incur indebtedness or levy taxes to a limited extent (see *infra* note 22).

The foregoing also gives an indication of the activities which cities actually engaged in during this period.

²² Thus under the Cities Act of 1850 (Cal. Stats. 1850, p. 87, § 12) cities could borrow money only if a majority of their voters approved, not to exceed three times their annual estimated revenue and direct taxes were not to exceed 2% of the assessed valuation. Under the Towns Act of 1850 (*ibid.* at p. 128, § 6) no power to borrow money was given and taxes were limited to 50¢ per \$100 assessed valuation. Under the Towns Act of 1856 (Cal. Stats. 1856, p. 198, §§ 6, 26) the town was prohibited from borrowing money in excess of \$3,000; the power to levy property taxes was limited to 1% of the assessed value thereof; the power to levy poll taxes limited to \$1 per male inhabitant per annum and the power to levy a dog tax limited to \$6 per dog per annum. The provisions of the Political Code respecting cities gave them no express power to borrow money and limited direct taxes to 2% of the assessed value (§ 4371, repealed in 1937). Similar limitations were found in the special charters. The following cases are illustrative:

San Francisco. The first charter of the City of San Francisco (Cal. Stats. 1850, p. 223, art. III, §§ 2, 3) prohibited the borrowing of money in excess of three times the annual estimated revenues of the city and the power to levy taxes was limited to 1% of the assessed value; the second charter (Cal. Stats. 1851, p. 357, art. III, §§ 5, 13) prohibited the council of the City of San Francisco from incurring debts in excess of \$50,000 over the annual revenue without a vote of the people, but limited taxes to 1% of the assessed value except for school purposes (as to which there was no limitation); the Consolidation Act (Cal. Stats. 1856, p. 145, §§ 12, 97) forbade the incurring of any indebtedness by the Board of Supervisors, Board of Education or any officer of the city. Cal. Stats. 1877-8, p. 111, § 1, prohibited San Francisco from incurring debts in any one month in excess of one-twelfth of the amount allowed to be expended during the whole year.

Sacramento. The first Sacramento Charter (Cal. Stats. 1850, p. 70, §§ 6, 7) provided that the city could not incur indebtedness in excess of its annual estimated revenues and could not levy taxes in excess of \$100,000 per year without the consent of its inhabitants. The second charter (Cal. Stats. 1851, p. 391, §§ 14, 15) allowed the incurring of debts not in excess of the annual estimated revenues and prohibited the levy of any tax except by vote of two-thirds of the elected members of the council and even then it could not exceed 2% of the assessed value unless the consent of a majority of the voters was first obtained. The Charter of the City and County of Sacramento (Cal. Stats. 1858, p. 267, § 20, repealed in 1863) forbade the board of supervisors from incurring liabilities against any fund in excess of the revenues applicable to such fund during the fiscal year

immunity from interference by the legislature in local affairs and in fact such interference was exceedingly frequent throughout this entire period. Not only were charters amended, superseded or repealed with great abandon,²³ but frequently other special acts, not purport-

in which such contracts or liabilities were made or created and limited taxation to \$.05 per \$100 of assessed value for general, \$1.00 for municipal, and \$.05 for road purposes. The third charter of the City of Sacramento (Cal. Stats. 1863, p. 415, §§ 20, 25) allowed the city to incur debts without limit provided the approval of the voters was first obtained in which event the levy of taxes to pay such debts was permitted, but taxes for other purposes could not exceed 1% of the assessed value.

San Jose. The first charter of San Jose (Cal. Stats. 1850, p. 124, §§ 6, 7) allowed the city to borrow money not in excess of annual estimated revenue and limited taxes to 1% of the assessed valuation. The second charter (Cal. Stats. 1857, p. 113, §§ 8, 11) prohibited the incurring of debts in excess of money in the treasury except with the approval of a majority of the voters and prohibited the levy of any taxes except to pay such indebtedness and even then such taxes were not to exceed 50¢ per \$100 assessed value. The third charter (Cal. Stats. 1865-6, p. 246, §§ 9, 13) prohibited incurring any debts in excess of actual revenue in the treasury and prohibited taxes in excess of 50¢ per \$100 assessed value for city purposes, 20¢ per \$100 for fire department purposes, and 25¢ per \$100 for sewer purposes, but allowed the levy of an additional tax of like amount for certain purposes, on obtaining the approval of a majority of the voters of the city. The fourth San Jose charter (Cal. Stats. 1871-2, p. 333, §§ 9, 13) prohibited the incurring of any debts in excess of actual revenue or available means in the treasury and limited taxes to 20¢ per \$100 for fire department purposes, and 50¢ for general purposes, but provided that taxes for school purposes should be sufficient for the support of the schools. The fifth San Jose charter (Cal. Stats. 1873-4, p. 395, § 14) changed the latter provision only by limiting school taxes to 30¢, fire department 20¢, sewerage and drainage 10¢ and general fund 35¢ per \$100.

Los Angeles. Los Angeles was first incorporated under the 1850 act for the incorporation of cities, referred to above with the limitations above specified. Subsequent amendments to its charter lowered the tax limit, first to 50¢ per \$100 (Cal. Stats. 1851, p. 329, § 2) and then to 25¢ per \$100 (*ibid.* 1852, p. 186, § 7) but later the limit was raised to \$1.50 (*ibid.* 1873-4, p. 633, § 3).

Oakland. Oakland was first incorporated in 1852 (Cal. Stats. 1852, p. 180) with the limitations set forth in the 1850 act for the incorporation of towns, set forth above. The second Oakland charter (Cal. Stats. 1854, p. 183) limited the power of the council to borrow to \$10,000, to be paid out of anticipated revenue for the year and taxes were limited to \$1.50 per \$100 (the latter limit was changed to \$1.25 except for bond redemption purposes by Cal. Stats. 1862, p. 337, § 6).

Stockton. The first charter (Cal. Stats. 1852, p. 211) allowed the council to borrow money not in excess of \$5,000 without first obtaining the consent of the voters and limited the right to levy taxes to 1% of the assessed value. The second charter (Cal. Stats. 1857, p. 133, § 21) allowed the levy of an additional tax of 50¢ per \$100 to pay certain bonds; the third charter contained the same limitations (Cal. Stats. 1862, p. 314, § 21); the fourth charter (Cal. Stats. 1871-2, p. 595, §§ 15, 38) limited "the annual expenses" to \$40,000 but allowed the incurring of additional indebtedness and levy of taxes therefor on vote of the electors of the city—otherwise taxes were limited to 2% of the assessed valuation.

²³ See Appendix C for list of special charters granted between 1850 and 1879.

ing to amend or repeal existing charters²⁴ and not otherwise referring to such charters, very drastically interfered with the local affairs of particular cities. Only in a relatively few instances did it appear that the wishes of the cities or of their inhabitants were made a prerequisite to the operation of such laws.²⁵

One of the most frequent types of special legislation was found in laws interfering with the fiscal affairs of particular cities. Thus cities were directed summarily to pay the claims of designated individuals against them;²⁶ to transfer money from one city fund to

²⁴ But such laws were none the less treated as in effect being amendments of the charter. *Kelsey v. Trustees of Nevada* (1861) 18 Cal. 629.

²⁵ Only one instance has been found in which the operation of a charter was by its terms made contingent on the securing of the approval of a majority of the voters of the city. This was in the case of the San Jose charter of 1859, Cal. Stats. 1859, p. 109, p. 117 (if such approval not secured the charter to be "null and void"). In two other instances elections were called by legislative act to obtain the approval or disapproval of charters by the voters of cities but there was no provision made that any charter should or should not be effective if the voters disapproved, the vote being advisory only. See Cal. Stats. 1861, p. 43 (submitting question of repeal of Petaluma charter to voters); Cal. Stats. 1862, p. 72 (submitting two proposed charters to voters of City of Sacramento).

It cannot be supposed, of course, that in all of these cases charters or amendments thereto were imposed on cities against the will of such cities or their inhabitants. In many instances they were passed on request of the cities themselves. Thus the San Francisco charter of 1851 (Cal. Stats. 1851, p. 357) gave effect to the wishes of the voters of the city expressed at an election. And in *Underhill v. Trustees of Sonora* (1860) 17 Cal. 173, 178, it was recognized by the court that statutes extending the statute of limitations on city bonds "were passed at the instance of the corporators".

²⁶ San Francisco was ordered to audit and pay claims on many occasions. Cal. Stats. 1857, p. 347 (claims of clerks of Board of Examiners) *ibid.* 1858, p. 183 (directing payment of salaries of school teachers); Cal. Stats. 1859, p. 6 (directing payment of claim of Moses Scott for \$1,000); *ibid.* at p. 19 (claim of special prosecutor of police court); *ibid.* at p. 36 (extra compensation for coroner); *ibid.* at p. 157 (directing payment of judgments); Cal. Stats. 1860, p. 2 (directing Commissioners of Funded Debt of San Francisco to issue bonds to John B. Dickinson in exchange for old bonds); *ibid.* at p. 4 (directing compromise and payment of claim); *ibid.* at p. 144 (directing payment of claim of \$2,872 for repairing equipment of fire department); *ibid.* at p. 257 (directing payment of five claims for work done for city); *ibid.* at p. 336 (directing supervisors to examine, and if found just, to allow certain described claims and to issue its bonds therefor); *ibid.* 1861, p. 94 (directing appropriation of \$40 per month for payment of steward or engine keeper for fire department); *ibid.* 1862, p. 459 (authorizing supervisors to ascertain amount due on claim and requiring them to pay it); Cal. Stats. 1869-70, p. 78 (directing appropriation of \$1,200 out of general fund to pay claim of James S. Houseman); *ibid.* at p. 82 (directing supervisors to pay claim of P. W. Van Winkle out of general fund); *ibid.* at p. 309 (directing supervisors to pay Patrick Creighton \$13,500 due on contract for grading streets).

The City and County of Sacramento was ordered to pay the claims for services rendered by officers of the old city (Cal. Stats. 1859, p. 41), to issue bonds to pay other claims (*ibid.* 1860, p. 190) and to pay a claim on the wagon road fund (*ibid.* 1861, p. 297).

another;²⁷ to issue bonds of the city for specified purposes, even without first securing the approval of the voters thereof or their representatives;²⁸ to call an election on whether bonds should be issued or taxes levied for various municipal or non-municipal purposes and requiring such issue if a majority of the voters of the city approved;²⁹

Placerville (*ibid.* 1862, p. 78), Oakland and Alameda (*ibid.* 1875-6, p. 207) were also directed to pay claims of designated individuals.

In one instance the legislature actually appropriated money out of the general fund of San Francisco to pay the claims of five designated individuals against the city and county (Cal. Stats. 1869-70, p. 522).

²⁷ Cal. Stats. 1859, p. 41 (directing officers of Sacramento to transfer money from one municipal fund to another); *ibid.* at p. 57 (directing San Francisco supervisors to transfer \$3,600 per year from general fund to police contingent fund); *ibid.* 1863, p. 46 (consolidating school funds of city of San Jose).

²⁸ Cal. Stats. 1861, p. 406 (requiring San Francisco Commissioners of Funded Debt to issue bonds to a designated individual); Cal. Stats. 1863-4, p. 217 (requiring Sacramento to issue bonds to pay claims); *ibid.* at p. 271 (requiring San Jose to issue certificates to fund indebtedness); *ibid.* 1869-70, p. 225 (requiring Benicia to issue bonds in exchange for city warrants); *ibid.* 1871-72, p. 152 (ordering Sacramento to issue new bonds in exchange for old ones); *ibid.* 1877-78, p. 957 (directing San Francisco supervisors to issue \$43,500 school bonds).

²⁹ The most frequent occasions for the exercise of this form of compulsion were in cases where the legislature desired the city to call an election on whether bonds should be issued or taxes levied in aid of a railroad. Thus San Francisco was ordered by Cal. Stats. 1860, p. 233, to call an election on a specified day to determine whether to subscribe to \$600,000 stock of a railroad. Auburn was ordered to call a similar election on whether \$50,000 should be subscribed (*ibid.* 1860, p. 254). The next year a similar election was ordered in San Francisco by Cal. Stats. 1861, p. 198, on whether to subscribe \$300,000 to railroad stock, to be decided by majority vote. In 1863, Placerville (Cal. Stats. 1863, p. 86), San Francisco (*ibid.* at p. 380), and Sacramento (*ibid.* at p. 447) were ordered to hold elections to determine whether \$100,000, \$1,000,000 and \$300,000 respectively should be subscribed to stock of railroads, the question to be determined by majority vote. Los Angeles (*ibid.* 1867-8, p. 20), Stockton (Cal. Stats. 1869-70, p. 551) and San Francisco (*ibid.* at p. 707) were ordered to hold similar elections, Los Angeles on whether \$75,000 in bonds should be issued to subscribe for such stock and Stockton on whether \$300,000 bonds should be issued for such purpose. The law last cited ordered the election on whether bonds in the amount of \$250,000 should be issued by San Francisco to aid in the construction of the Southern Pacific Railroad *from Gilroy southward*.

Laws directed the calling of an election on whether bonds should be issued or a tax levied for other purposes as well. Thus in 1859 a law (Cal. Stats. 1859, p. 20) directed Sacramento to submit to the voters the question of whether money should be appropriated and a tax levied to purchase grounds and a building for the use of the State Agricultural Society. In 1861, Marysville was ordered to call an election on whether to appropriate \$7,000 for a horticultural society (*ibid.* 1861, p. 50). In 1862, Sacramento was ordered to call an election on whether city debts should be funded into bonds (*ibid.* 1862, p. 503). In 1872 Stockton was ordered to call an election on whether the school debt of the city should be funded (Cal. Stats. 1871-2, p. 557). In the same year Sacramento was required to call an election on whether to issue bonds to acquire a water supply for the city (*ibid.* at p. 723). In 1878 a similar election was ordered in Oakland

to pay salaries of specified amounts to municipal officers;³⁰ to spend money or levy taxes for various purposes;³¹ to sell property owned by it,³² or to receive city warrants or other claims in payment of city taxes.³³ Taxes illegally levied were legalized by special act.³⁴ Special commissions or boards, not chosen by the people of the city or their representatives, and vested with power to refinance or readjust the indebtedness of the city and often having the power to issue bonds,

on the question of issuing bonds to acquire a water works (Cal. Stats. 1877-8, p. 427). San Jose was ordered to call an election on whether to issue sewer bonds in 1878 (*ibid.* at p. 631).

³⁰ Cal. Stats. 1861, p. 275 (Sacramento); *ibid.* at p. 554 (San Francisco). The ordinary practice in earlier years was to confer power on the legislative body of the city to fix salaries of city officers. See *e.g.*, charters for Sacramento (Cal. Stats. 1850, p. 70, p. 72, § 9); San Francisco (*ibid.* at p. 223, p. 227, § 22); San Jose (*ibid.* at pp. 124-25, § 9); Cities Act of 1850 (*ibid.* at p. 87, p. 90, § 20); Towns Act of 1850 (*ibid.* at p. 128, p. 129, § 9).

It soon became customary, however, for the charter to place limitations on such power of the council or other legislative body. Thus it became common to provide that the mayor or council should receive no salary. This was done in the cases of Benicia (*ibid.* at p. 119, p. 120, § 13); Stockton (*ibid.* 1852, p. 211, 216, § 8); Placerville (Cal. Stats. 1854, p. 140, p. 144, § 4); Oakland (*ibid.* at p. 183, p. 185, § 4); San Jose (*ibid.* 1857, p. 113, p. 118, § 22); and Santa Barbara (*ibid.* 1861, p. 502, p. 503, § 7). And often the charter would prescribe maximum salaries for certain officers, as in the case of Marysville (Cal. Stats. 1851, p. 330, p. 337, § 9, mayor not to receive more than \$1,000); Nevada City (*ibid.* at p. 339, p. 346, § 10—same); San Francisco (*ibid.* at p. 357, p. 364, § 12—no salary of an officer to exceed \$4,000; the Consolidation Act of 1856, *ibid.* 1856, p. 145, §§ 10, 11, specifically fixed the salaries of all city and county officers) and Stockton (*ibid.* 1852, p. 211, p. 217, §§ 9-13—maximum salaries of all officers fixed).

³¹ Thus, San Francisco was ordered to spend \$1,300 for the completion of an additional story for the engine house of its fire department (Cal. Stats. 1862, p. 66); to levy taxes to pay judgments against the city (*ibid.* 1859, p. 157); to levy taxes for school purposes (*ibid.* 1867-8, p. 424). Sacramento was ordered to levy taxes to support the State Agricultural Society (*ibid.* 1860, p. 286; *ibid.* 1861, p. 305) to pay for lands selected as a site for the state capitol (*ibid.* 1861, p. 53); to support its fire department (*ibid.* 1863-4, p. 93); for school purposes (Cal. Stats. 1867-8, p. 64); to build sidewalks (*ibid.* at p. 99); to pay its funded debt (*ibid.* 1871-2, p. 546); to pay specified claims (*ibid.* 1873-4, p. 309; *ibid.* 1875-6, p. 73). Nevada (*ibid.* 1861, p. 179); Sonora (*ibid.* 1863-4, p. 312) and Mokelumne Hill (*ibid.* 1871-2, p. 625) were ordered to levy taxes for the support of their respective fire departments.

³² San Jose was directed to sell bonds of Santa Clara County which it owned, Cal. Stats. 1869-70, p. 448.

³³ Cal. Stats. 1857, p. 347 (claims against San Francisco); *ibid.* 1861, p. 343, *ibid.* 1862, p. 497 (Sacramento warrants).

³⁴ Taxes for municipal purposes of San Francisco (Cal. Stats. 1855, p. 279; *ibid.* 1858, p. 4; *ibid.* 1859, p. 123; *ibid.* 1875-6, p. 820, 903), Sacramento (*ibid.* 1858, p. 63; *ibid.* 1860, p. 139; *ibid.* 1861, p. 119; *ibid.* 1873-4, p. 691—street improvement assessment), San Jose (*ibid.* 1862, p. 62), Los Angeles (*ibid.* 1862, p. 171; *ibid.* 1867-8, p. 92; *ibid.* 1869-70, p. 635), Oakland (*ibid.* 1862, p. 485) and Placerville (*ibid.* 1862, p. 78; *ibid.* 1867-8, p. 575) were legalized by the statutes referred to.

levy taxes or to allow and pay claims were very frequent, especially during the earliest years of the state's history.³⁵

Not much if any less frequent were the numerous laws setting up other types of special commissions or boards whose members were also not chosen by the inhabitants of the city or their representatives, and vesting them with power to regulate various matters of local concern. Thus such commissions or boards were sometimes given control of the city fire department.³⁶ And frequently they were given control of the construction or operation of municipal waterworks, parks, streets or other public enterprises.³⁷ Of a somewhat

³⁵ Boards or commissions of individuals specifically designated by the legislature in the act itself, usually called the "Commissioners of the Funded Debt" with authority to fund the floating or other debt of the city by exchanging bonds of the city (sometimes called "stock") therefor were established for San Francisco (Cal. Stats. 1851, p. 387), San Jose (*ibid.* 1858, p. 193; *ibid.* 1859, p. 75), Oakland (*ibid.* 1858, p. 308—but mayor of city was designated as one of the commissioners), Sacramento (*ibid.* 1862, p. 503) and Los Angeles (*ibid.* 1869-70, p. 671). In other cities designated city officers were constituted a "Board of Funding Commissioners" with similar powers, e.g., in Marysville (*ibid.* 1855, p. 213; *ibid.* 1867-8, p. 34; *ibid.* 1875-6, p. 60—board consisted of mayor, president of council and treasurer), San Jose (*ibid.* 1856, p. 211—same), and Placerville (*ibid.* 1858, p. 43—board consisted of mayor, clerk and treasurer).

In 1858 a board of five individuals named by the legislature in the act itself was constituted a "Board of Examiners" of the City and County of San Francisco, with authority to pass on, approve, allow or reject claims against the city and if allowed the commissioners of the funded debt were required to issue bonds in payment of such claims (Cal. Stats. 1858, p. 183). In 1870 an act authorized the governor to appoint a commission of three persons to determine the validity of certain contracts and assessments for street work in San Francisco (*ibid.* 1869-70, p. 711). In 1859 an act (*ibid.* 1859, p. 212) constituted the president of the board of supervisors, the auditor and the treasurer of San Francisco as commissioners of the Fire Bond Sinking Fund of the city, with authority to administer such fund.

³⁶ Statutes frequently set up a board of fire commissioners to regulate and govern the fire department of the city. Cal. Stats. 1865-6, p. 138 (board of five commissioners for San Francisco, two elected by voters, one appointed by supervisors and two appointed by Board of Fire Underwriters—a private association); *ibid.* 1871-2, p. 866 (board for Sacramento to be appointed by governor from members of Volunteer Fire Department of Sacramento); *ibid.* 1877-8, p. 685 (reorganize San Francisco fire department, board of five fire commissioners to govern it, three appointed by board of supervisors and one each by judges of municipal criminal court and county court, with power to fix salaries of fire department); *ibid.* 1877-8, p. 796 (Oroville board, named by legislature in act, given power to call election and levy a special tax for fire department purposes, also to act as a board of equalization). In 1870 a statute incorporated a fire department in San Jose to be governed by officers designated in act (*ibid.* 1869-70, p. 562).

³⁷ In 1874 a law authorized the governor to appoint a board of public works to obtain a water supply for Oakland, the board having power to issue bonds of the city to pay for the works so purchased, Cal. Stats. 1873-4, p. 892. In 1876 a statute created a similar board for Los Angeles to take charge of water works, gas works, streets, parks and other public works, Cal. Stats. 1875-6, p. 856. Other laws passed the same year

related character were the numerous laws granting to individuals the power to lay down tracks, pipes or poles in city streets or to construct and operate railroads, gasworks, waterworks or wharves in the designated cities.³⁸

There were still other types of interference. Numerous laws were passed validating otherwise illegal municipal ordinances, contracts or other actions.³⁹ And cities were often directed to open, widen, close,

established somewhat similar boards for San Francisco, one (*ibid.* at p. 82) created a board of water commissioners to regulate water rates in the city, the commissioners being appointed by the mayor with the approval of the board of supervisors, while another (*ibid.* at p. 501) constituted the mayor, district attorney and auditor a board of commissioners with power to purchase a supply of pure fresh water for the inhabitants of the city. In 1870 two laws vested in the governor power to appoint two commissions for San Francisco, one with power to construct a city hall (Cal. Stats. 1869-70, p. 738) and the other with exclusive power to control and manage the parks of the city (*ibid.* at p. 802). In 1876 a law (*ibid.* 1875-6, p. 461, § 8) constituted the mayor, city attorney and auditor of San Francisco as a board of new city hall commissioners to construct the city hall, their salary being fixed at \$100 per month. Often statutes gave special boards, commissions or officers power to construct, widen or repair city streets. Cal. Stats. 1875-6, p. 433, § 4, constituted the mayor, auditor and surveyor of San Francisco a "Board of Dupont Street Commissioners" with power to widen said street, to issue bonds of the city therefor, and each commissioner to receive a compensation of \$2,000. *Ibid.* at p. 893, gave to the board of auditors of El Dorado County control of all streets and sidewalks in Placerville. *Ibid.* 1877-8, p. 544, authorized the superintendent of streets of San Francisco to repair public streets, the expense to be paid from city funds.

³⁸ Individuals or corporations designated in special laws were granted the right to lay down water pipes in the streets of San Francisco (Cal. Stats. 1858, p. 254, San Francisco granting such power to Spring Valley Water Works and giving board power to fix rates) and Aurora (*ibid.* 1863, p. 118, 401); to supply the inhabitants of Santa Barbara (*ibid.* 1861, p. 278), San Luis Obispo (*ibid.* 1871-2, p. 666) and Merced (*ibid.* 1877-8, p. 354) with water; to lay down gas pipes in the streets of San Francisco (*ibid.* 1861, p. 354; *ibid.* 1862, p. 471; *ibid.* 1863, p. 395, p. 730); to lay down tracks for street railroads in San Francisco (*ibid.* 1861, p. 190, p. 193; *ibid.* 1862, pp. 308, 412; *ibid.* 1863, pp. 376, 392, 403, 455, 649; *ibid.* 1865-6, p. 749; *ibid.* 1867-8, pp. 376, 470, 711; *ibid.* 1869-70, p. 246; *ibid.* 1877-8, p. 818) and Sacramento (*ibid.* 1861, pp. 144, 382; *ibid.* 1867-8, p. 368); and to construct roads, including toll roads in San Francisco (*ibid.* 1861, p. 261; *ibid.* 1862, p. 275; *ibid.* 1863, p. 556; *ibid.* 1863-4, pp. 405, 421).

³⁹ Thus statutes were passed confirming and legalizing ordinances of San Francisco authorizing the building of plank roads (Cal. Stats. 1851, p. 327; *ibid.* 1853, p. 199); adopting a plan of streets (*ibid.* 1858, p. 52, § 5); fixing the location of streets (*ibid.* 1861, p. 292); granting to individuals the right to construct a railroad on city streets (*ibid.* 1865-6, p. 589); exchanging lands (*ibid.* 1869-70, p. 83); conveying away lands of city (*ibid.* 1869-70, p. 108; *ibid.* 1873-4, p. 789); requiring property owners to fence their lots (*ibid.* 1871-2, p. 511); improving streets (*ibid.* 1873-4, pp. 487, 588) and extending the jurisdiction of park commissioners over a certain highway (*ibid.* 1877-8, p. 967). In one instance an ordinance of San Francisco authorizing a water company to conduct water into San Francisco was amended by the legislature and as so amended was confirmed (*ibid.* 1860, p. 169). The legislature also legalized and confirmed ordinances grant-

extend, grade or improve streets⁴⁰ or to construct other public improvements.⁴¹ Laws regulating city fire departments, often in minute details of organization, were frequent.⁴² On numerous occasions regulations in the exercise of the police power were made applicable only to specified cities.⁴³ And there were many other kinds of meddling in

ing the right to certain persons to supply the city with gas or water, passed in San Jose (*ibid.* 1861, p. 142; *ibid.* 1865-6, p. 635) and Vallejo (*ibid.* 1869-70, pp. 248, 515). Ordinances were confirmed providing for the lighting of streets in Oakland (*ibid.* 1869-70, p. 302), establishing a gas works in Los Angeles (*ibid.* 1867-8, p. 71), ordering payment of a claim by Oakland (*ibid.* 1869-70, p. 89; *ibid.* 1873-4, p. 104), conveying land by Santa Barbara (*ibid.* 1875-6, p. 282) and Stockton (*ibid.* 1875-6, p. 201), abandoning streets by Oakland (*ibid.* 1877-78, p. 71), providing for the construction, repair and maintenance of streets and sewers in Los Angeles (*ibid.* 1877-78, p. 74). Laws were passed confirming all ordinances of Sonora (*ibid.* 1861, p. 271) and Santa Barbara (*ibid.* 1865-6, p. 638).

Contracts between the commissioners of the sinking fund or the board of supervisors of San Francisco on the one hand and designated individuals on the other, were confirmed (*ibid.* 1851, pp. 313, 315; *ibid.* 1867-8, p. 662; *ibid.* 1877-8, p. 259), as were similar contracts of Oakland (*ibid.* 1869-70, p. 302), Los Angeles (*ibid.* 1869-70, p. 635; *ibid.* 1877-8, p. 849) and Stockton (*ibid.* 1877-8, p. 170).

⁴⁰ San Francisco (Cal. Stats. 1869-70, pp. 386, 626, 749), San Jose (*ibid.* 1867-8, p. 120) and Redwood City (*ibid.* 1873-4, p. 466) were required to open streets. In several instances statutes were passed which themselves opened (*ibid.* 1869-70, p. 484; *ibid.* 1871-2, p. 911; *ibid.* 1875-6, pp. 762, 772, 866; *ibid.* 1877-8, p. 802), closed (*ibid.* 1877-8, p. 682), established the line of (*ibid.* 1869-70, p. 651) or changed or established the grade of (*ibid.* 1867-8, p. 85; *ibid.* 1869-70, pp. 383, 782; *ibid.* 1873-4, p. 590; *ibid.* 1875-6, pp. 500, 753; *ibid.* 1877-8, p. 232) streets in the City and County of San Francisco. In one instance San Francisco was required to order street improvements by "the Nicholson pavement" method (*ibid.* 1865-6, p. 720).

⁴¹ San Francisco was ordered to construct a draw bridge (Cal. Stats. 1877-8, p. 372) and a canal (*ibid.* 1871-2, p. 926). Petaluma was directed to maintain a sewer system (*ibid.* 1877-8, p. 436).

⁴² Cal. Stats. 1853, p. 60, § 8 (limited the number of fire companies in the fire departments of San Francisco, Sacramento, Stockton and Marysville); *ibid.* 1855, p. 293; *ibid.* 1857, p. 88; *ibid.* 1862, pp. 183, 542 (regulated organization of San Francisco fire department in minute detail); *ibid.* 1856, p. 126 (regulated organization of fire department of City of Sacramento including fixing of salaries of members thereof); *ibid.* 1858, p. 209 (repealed 1855 act and fixed salaries of assistant engineers and clerk of San Francisco fire department); *ibid.* 1861, p. 251 (limited compensation of policemen in Marysville); *ibid.* 1862, p. 335 (created and organized fire department for Town of Mokelumne Hill); *ibid.* 1863, p. 70 (same for Downieville); *ibid.* 1863, p. 671 (same for Town of Jackson).

⁴³ Cal. Stats. 1862, p. 210 (making it unlawful to allow cattle to run at large in streets of town of Napa City); *ibid.* 1865-6, p. 337 (unlawful to deface Sacramento cemeteries); Cal. Stats. 1871-2, p. 157 (unlawful to permit hogs to run at large within limits of townsite of Shasta); *ibid.* at p. 529 (same for Town of Red Bluff); *ibid.* at p. 681 (regulate practice of pharmacy in San Francisco); Cal. Stats. 1875-6, p. 180 (prevent hogs running at large in Town of Woodbridge, San Joaquin Co.); *ibid.* at p. 402 (prevent hogs and goats running at large in Town of Sutter Creek, Amador County); *ibid.*

local affairs.⁴⁴

A very deceptive form of interference was found in the very great number of laws which did not on their face purport to do anything more than to "authorize" the city or its legislative body to take certain specific action in designated matters. Normally such laws would have been expected to be regarded as permissive. But such was not the view of the California Supreme Court, which early held that laws of this character would in many cases be construed as being in fact mandatory.⁴⁵ Accordingly, laws which in terms purported only to "au-

at p. 800 (prevent hogs, goats and cows from running at large in Town of Washington, Yolo Co.); Cal. Stats. 1877-8, p. 18 [limiting to 5c the rate of fare on street railroads in cities over 100,000 (San Francisco)]; *ibid.* at p. 33 (prevent hogs and goats from running at large in Weaverville, Trinity Co.); *ibid.* at p. 79 (repeal act to prevent hogs from running at large in Red Bluff and Tehama); *ibid.* at p. 435 (prevent hogs from running at large in towns of Lakeport and Lower Lake, Lake Co.); *ibid.* at p. 1020 (prevent hogs and goats running at large in Town of Plymouth, Amador Co.); *ibid.* at p. 214 (regulations to protect Fresno and Merced against fire); *ibid.* 1865-6, p. 849 (prescribing rates of fare of a street railroad in San Francisco).

⁴⁴ Cal. Stats. 1859, p. 40 (attaching territory adjacent to City of Sacramento for school purposes); *ibid.* at p. 153 (fixing location of slaughter houses in San Francisco); *ibid.* 1860, p. 343 (declaring certain streets in town of Red Bluff to be public highways); *ibid.* 1861, p. 273 (prescribing duties of auditor of City and County of Sacramento); *ibid.* 1862, p. 454 (providing for government of common schools of City of Sacramento); *ibid.* 1867-8, p. 169 (legalizing municipal election in Eureka); *ibid.* 1867-8, p. 378 (regulating municipal elections in Petaluma and Santa Rosa); Cal. Stats. 1869-70, p. 309 (regulating Marysville election); *ibid.* at p. 407 (regulating street railroad rates in San Francisco); *ibid.* 1873-4, p. 179 (changing time of holding Oakland charter election); Cal. Stats. 1875-6, p. 62 (dividing Oakland into wards); *ibid.* at p. 64 (fixing time of holding elections in Hayward); *ibid.* 1877-8, p. 299 (act to secure purity of elections in San Francisco); *ibid.* 1856, p. 31 (changing corporate name of Los Angeles from "Mayor, Recorder and Common Council of City of Los Angeles" to "The Mayor and Common Council of the City of Los Angeles"); Cal. Stats. 1860, p. 109 (changing name of Town of Union, Humboldt County to Arcata); Cal. Stats. 1861, p. 12 (changing name of Town of Brazos del Rio to Rio Vista).

⁴⁵ In *Napa Valley R. R. v. Napa Co.* (1866) 30 Cal. 435, an act of the legislature (Cal. Stats. 1865-6, p. 810) provided that the board "are hereby authorized and empowered to take and subscribe to the capital stock of the Napa Valley Railroad Company an amount equal to the present indebtedness of said company, and not exceeding thirty thousand dollars, and issue and deliver to said company the bonds of said county in payment." The act was held to require the county to make the subscription and the duty of the county was held enforceable at the instance of the railroad in an action of mandamus. The court reasoned that "According to a well settled rule of construction, where a public body or officer has been 'empowered' to do an act which concerns the public interest, the execution of the power may be insisted on as a duty" (*ibid.* at 437), and that railroads concern the public interest. In *People v. San Francisco* (1869) 36 Cal. 595, a law (Cal. Stats. 1867-8, p. 594), providing that the board "are hereby authorized to modify the grade of Second Street" in San Francisco, was held mandatory. The court pointed to the minute details with respect to the improvement as indicating an intention

thorize" a city to allow claims,⁴⁶ issue bonds,⁴⁷ levy special taxes,⁴⁸

that the act should be mandatory. By this reasoning any power given by act of legislature must be construed as mandatory if only the acts "authorized" are described in sufficient detail. In *San Diego v. San Diego & L. A. R. R.* (1872) 44 Cal. 106, it was assumed that an act "authorizing" the board of trustees of San Diego to convey land to a railroad, required such action. In *Bank of Sonoma County v. Fairbanks* (1877) 52 Cal. 196, 198, however, it was assumed that an act authorizing Petaluma to issue bonds to purchase a named park was permissive and not mandatory, but the point was not argued and none of the above cases were cited by either court or counsel.

⁴⁶ San Francisco was "authorized" to allow certain specified claims against the city in many instances. Cal. Stats. 1857, p. 271; *ibid.* 1860, p. 143 (claim of \$3,575); *ibid.* at p. 146 (not exceeding \$3,000 claim for entertaining members of Japanese embassy); *ibid.* at p. 272; *ibid.* 1861, p. 170 (expenses of survey of harbor); *ibid.* 1861, pp. 345, 405, 486; *ibid.* 1863, p. 574 (claim of \$250 per month for support of home for inebriates); *ibid.* 1867-8, p. 87; *ibid.* 1869-70, p. 104 (\$5,000 claim); *ibid.* 1871-2, p. 43 (authorizing appropriation of money to pay certain claims); *ibid.* 1871-2, p. 546; *ibid.* 1873-4, pp. 131, 750; *ibid.* 1875-6, pp. 443, 850, 858; *ibid.* 1875-6, p. 338 (authorizing appropriation of money to maintain and support a fire alarm and police telegraph system); *ibid.* 1877-8, pp. 5, 47, 78, 287, 556 (authorizing supervisors to appropriate, allow and order paid out of the general fund large sums for specific public improvements). Sacramento was given similar authorization to pay specified claims by Cal. Stats. 1860, p. 230; *ibid.* 1861, pp. 36, 500; *ibid.* 1869-70, p. 375.

⁴⁷ San Francisco was "authorized" to issue bonds without an election in the following cases, Cal. Stats. 1860, p. 101 (board of education authorized to issue \$75,000 bonds payable from school fund); *ibid.* 1861, p. 242 (same—\$25,000 bonds); *ibid.* 1873-4, p. 807 (for purchase of Spring Valley Water Co. waterworks system). Sacramento was "authorized" without an election to issue \$120,000 bonds for payment of city warrants and for use of the city fire department (*ibid.* 1854, p. 196) and to issue other bonds to pay a judgment (*ibid.* 1875-6, p. 622). Oakland was "authorized" to fund its debt (*ibid.* 1855, p. 218), to issue \$50,000 school bonds constituting general obligations of the city (*ibid.* 1867-8, p. 148), to issue \$50,000 city hall bonds (*ibid.* 1867-8, p. 196), and to issue bonds to pay other bonds of the city (*ibid.* 1873-4, p. 845) all without an election. Los Angeles was "authorized" to issue \$25,000 bonds, without an election, for a specified municipal improvement (*ibid.* 1862, p. 10); to pay damages for widening and extending a named street (*ibid.* 1877-8, p. 419). Placerville was "authorized" to issue \$6,000 bonds for relief of the city fire department (*ibid.* 1863, p. 166). Vallejo was "authorized" to issue bonds to support its fire department (*ibid.* 1871-2, p. 296). San Jose was "authorized" to issue \$100,000 sewer bonds without an election (*ibid.* 1871-2, p. 365). Salinas was "authorized" to issue bonds to provide for a school house and fire department (*ibid.* 1873-4, p. 820). Hollister was "authorized" to issue bonds for a school house (*ibid.* 1873-4, p. 840) and for specific water and fire department purposes (*ibid.* 1875-6, p. 125) without an election.

⁴⁸ San Francisco was "authorized" to levy a special tax for the preservation of and improvement of Golden Gate Park (Cal. Stats. 1875-6, p. 861); to levy a tax to add to the park improvement fund (*ibid.* 1877-8, p. 966). Sacramento was "authorized" to levy a special tax to pay for a site for the state capitol (*ibid.* 1860, p. 232). Oakland was "authorized" to levy taxes to pay interest on its funded debt (*ibid.* 1862, p. 485). Sonoma was "authorized" to levy a special tax for the purchase of a fire engine if the voters approved (*ibid.* 1860, p. 206), and for the use of its fire department (*ibid.* 1871-2, p. 85). Nevada was "authorized" to levy a tax to construct a bridge (*ibid.* 1861, p. 78); for city expenditures (*ibid.* 1867-8, p. 300). Petaluma was "authorized" to levy a special tax for its fire department (*ibid.* 1863, p. 186).

open, widen, extend, grade or improve certain designated streets,⁴⁹ or make other specific public improvements⁵⁰ or to take various other similar kinds of specific action in numerous matters,⁵¹ must, it would seem, be read in many cases not as merely permitting, but as requiring such action.

While most of the cities of this period were created and governed by special acts of the legislature, it is interesting to note that several

⁴⁹ San Francisco was "authorized" to modify the grade of certain streets (Cal. Stats. 1861, pp. 20, 345; *ibid.* 1867-8, pp. 463, 594; *ibid.* 1877-8, p. 966); to establish the street grades specified in an act (*ibid.* 1862, p. 407; *ibid.* 1863-4, p. 460; *ibid.* 1867-8, p. 433); to close specified streets (*ibid.* 1865-6, p. 37; *ibid.* 1871-2, p. 45); to widen or extend specified streets (*ibid.* 1865-6, p. 37); to improve designated streets (*ibid.* 1875-6, p. 74; *ibid.* 1877-8, p. 915; *ibid.* 1877-8, pp. 231, 849, 931); to open designated streets (*ibid.* 1877-8, p. 923). Oakland was "authorized" to open named streets (*ibid.* 1877-8, p. 614). Stockton was "authorized" to vacate certain streets (*ibid.* 1863, p. 56). Marysville was "authorized" to close a named street (*ibid.* 1869-70, p. 221); Alameda to widen named streets (*ibid.* 1873-4, p. 795, *ibid.* 1875-6, p. 424) and to extend another (Cal. Stats. 1877-8, p. 964). Santa Barbara was "authorized" to buy land to open a street (*ibid.* at p. 954), and to open a named street (*ibid.* at p. 777). San Jose was "authorized" to open a named street (*ibid.* at p. 620).

⁵⁰ San Francisco was "authorized" to construct wharves at the end of all streets commencing with San Francisco Bay by extending said streets into the Bay in their present direction, not to exceed 200 yards (Cal. Stats. 1851, p. 311); to purchase or erect a suitable building for a city hall at a cost not to exceed \$125,000 (*ibid.* 1852, p. 201); to purchase and erect water hydrants (*ibid.* 1859, p. 87); to construct a sewer on Fifth Street (*ibid.* 1862, p. 451); to improve Washington Plaza (*ibid.* 1871-2, p. 762); to purchase a school site (*ibid.* 1873-4, p. 848); to construct a sewer on designated streets and to pay the cost thereof out of the general fund (*ibid.* 1877-8, p. 943). Sacramento was "authorized" to grade certain public alleys and construct sewers thereon (*ibid.* 1867-8, p. 221); Oakland was "authorized" to construct a sewer over a specified route (*ibid.* 1873-4, p. 530; 1875-6, p. 896); to construct a bridge (*ibid.* 1875-6, p. 653). Stockton was "authorized" to excavate, widen and open Mormon Slough (*ibid.* 1871-2, p. 540); to acquire flood control works (*ibid.* 1875-6, p. 12). Petaluma was "authorized" to issue bonds for the purchase of a designated agricultural park (*ibid.* 1873-4, p. 526). Santa Clara was "authorized" to construct a sewer on named streets (Cal. Stats. 1877-8, p. 216) as was Santa Cruz (*ibid.* at p. 999).

⁵¹ San Francisco, or designated officers thereof, were "authorized" to convey land (Cal. Stats. 1869-70, p. 413; *ibid.* 1871-2, p. 513); to increase the police force (*ibid.* 1871-2, p. 512); to borrow money to pay interest on bonds (*ibid.* 1859, p. 312); or to provide for a prospective deficiency in the corporation debt fund (Cal. Stats. 1860, p. 156); to donate a site for the State Blind School (*ibid.* at p. 277); to employ special counsel (*ibid.* 1861, p. 59); to order a resurvey of a certain street (*ibid.* 1867-8, p. 714). Oakland was "authorized" to grant certain privileges to a named street railroad (*ibid.* 1875-6, p. 499). Los Angeles was "authorized" to extend the limits of the city 1500 yards or less, on any one or all of its sides (*ibid.* 1859, p. 253). San Diego was "authorized" to convey lands to a named railroad (*ibid.* 1855, p. 206; *ibid.* 1869-70, p. 696). Santa Clara was "authorized" to sell a public square (Cal. Stats. 1875-6, p. 569). Healdsburg was "authorized" to subscribe city money to aid private schools (*ibid.* 1875-6, p. 890).

attempts were also made to provide for the incorporation of cities and towns by general law.⁵² Thus in 1850 a law was enacted⁵³ (hereinafter called the "Cities Act of 1850") under which any "city" having a population of 2,000 or more could be incorporated under the act with the organization and powers therein specified. This could be done either (1) by special act of the legislature defining the boundaries of the city or, (2) if a majority of the qualified electors of any town or village shall present a petition to the county court for such incorporation the court "shall declare such town or village incorporated as a city". No city appears ever to have been incorporated under this act by either method.

A somewhat similar act was also passed in 1850⁵⁴ (hereinafter called the "Towns Act of 1850") for the incorporation of towns or villages with a population of 200 or more and having an area not exceeding three square miles. The act provided for a petition to be presented to the county court setting forth the boundaries of the town, and signed by a majority of the qualified electors thereof. If satisfied that the requirements of the act have been fulfilled, such court "shall declare such town incorporated", and it shall then have the organization and powers specified in the act. The act was held unconstitutional as an invalid delegation of legislative power to the judiciary in *People v. Town of Nevada*,⁵⁵ and this ruling, of course, equally condemned the second method of incorporation provided in the Cities Act of 1850. The court indicated very clearly in its opinion in this case, however, that a law providing for such incorporation on similar petition to the county board of supervisors would be valid,⁵⁶ and in 1856 the legislature passed just such a law, repealing the Towns Act of 1850.⁵⁷ The act does not appear to have been chal-

⁵² Governor Burnett, the first governor of California, seems responsible for these general incorporation laws for it was only after he vetoed special charters for some cities with recommendations that the legislature pass general laws for the incorporation of cities and towns, that such general laws were passed. GOODWIN, *THE ESTABLISHMENT OF STATE GOVERNMENT IN CALIFORNIA, 1846-1850* (1914) 297 *et seq.*

⁵³ Cal. Stats. 1850, p. 87.

⁵⁴ *Ibid.* at p. 128.

⁵⁵ (1856) 6 Cal. 143. Santa Clara was also incorporated by order of the county court on July 5, 1852, but the incorporation was legalized and confirmed by Cal. Stats. 1856, p. 79.

⁵⁶ "Admitting that the Legislature can delegate the power . . . of establishing town governments, it must be to the supervisors, or some other person or body possessing like functions, and not to a Court which is inhibited from the performance of any other than judicial acts." 6 Cal. at 144.

⁵⁷ Cal. Stats. 1856, p. 198.

lenged in the courts and several small towns appear to have been incorporated thereunder by order of the board of supervisors of their respective counties.⁵⁸

The last attempt at incorporation of cities under general law was made under the provisions of the Political Code on its enactment in 1872.⁵⁹ These provisions appear to constitute in effect a mere adoption or codification of the substantive provisions of the Cities Act of 1850, except that the organization and powers of cities incorporated thereunder were substantially revised. The Political Code simply declared that every subdivision of a county having a population of 2,000 inhabitants or more and an area not exceeding six

⁵⁸ Only three towns appear to have been incorporated by order of the board of supervisors under the act of 1856. (1) Antioch, so incorporated in 1872 [see *Wristen v. Donlan* (1889) 79 Cal. 472, 473, 21 Pac. 868]. Antioch operated under that incorporation from 1872 to 1890, when it was incorporated under the Municipal Corporation Bill. (2) Healdsburg and (3) Santa Rosa were incorporated by order of the county board of supervisors some time prior to March 16, 1868, when Cal. Stats. 1867-8. was passed legalizing the incorporation of these towns—under the Towns Act of 1850, however. (Apparently counsel had filed their petition under the wrong act.) No other instances of the incorporation of towns by order of the board of supervisors are known. The references in several statutes to localities as "the town of" suggests that such localities may have been incorporated in this way. "Strawberry Valley", Yuba County, was referred to as a "town" by Cal. Stats. 1860, p. 115, and its boundaries defined. "La Porte" in Sierra County and "Quincy" in Plumas County, were referred to as "towns" in Cal. Stats. 1865-6, p. 490; "New San Pedro" was referred to as a "town" and its name changed to "Wilmington" in Cal. Stats. 1863, p. 328; "Mokelumne Hill" was referred to as a "town" by Cal. Stats. 1873-4, p. 690, and its name changed to "Lodi"; "Rough and Ready", Siskiyou County, was referred to as a "town" by Cal. Stats. 1873-4, p. 346, and its name changed to "Etna"; "New Republic", Monterey County, was referred to as a "town" by Cal. Stats. 1873-4, p. 823, and its name changed to "Santa Rita"; "Lexington" was referred to as a "town" by Cal. Stats. 1875-6, p. 854, and its name changed to "El Monte"; "Woodbridge", San Joaquin County, was referred to as a "town" by Cal. Stats. 1875-6, p. 180, making it unlawful to allow hogs to run at large in such town; "Dorris Bridge" was referred to as a "town" and its name changed to "Alturas" by Cal. Stats. 1875-6, p. 513; "Fiddleton", Amador County, was referred to as a "town" and its name changed to "Oleta" by Cal. Stats. 1877-8, p. 109.

In many cases cities were incorporated by special act but with the organization, powers, or duties specified in the Towns Act of 1850 (Alameda, Cal. Stats. 1854, p. 209; Alviso, *ibid.* 1852, p. 222; Anaheim, *ibid.* 1869-70, p. 66; El Dorado, *ibid.* 1855, p. 116; Los Angeles, *ibid.* 1850, p. 155; Oakland, *ibid.* 1852, p. 180; San Bernardino, *ibid.* 1854, p. 61; Santa Barbara, *ibid.* 1850, p. 172; Sonoma, *ibid.* 1850, p. 150) or the Towns Act of 1856 (Auburn, *ibid.* 1860, p. 135; Coloma, *ibid.* 1858, p. 207; Columbia, *ibid.* 1857, p. 188; Dutch Flat, *ibid.* 1863, p. 255; Etna, *ibid.* 1877-8, p. 261; Hornitos, *ibid.* 1861, p. 118; San Buenaventura, *ibid.* 1865-6, p. 216; San Juan, *ibid.* 1869-70, p. 245; San Luis Obispo, *ibid.* 1871-2, p. 220; Santa Barbara, *ibid.* 1861, p. 502; Ukiah City, *ibid.* 1875-6, p. 162; Yreka, *ibid.* 1857, p. 229).

⁵⁹ § § 4354-4449. These provisions remained in the Code until 1937, when they were finally repealed.

square miles "and declared by an act of the legislature to be a municipal corporation", is a city with the powers conferred by the Code.⁶⁰ This was a rather ambiguous provision for it could have been taken to mean that any city previously recognized as a municipal corporation and having the required population and area was a city with the powers specified in the Code—in short that all previous special charter cities, having already been recognized and declared by "an act of the legislature" to be municipal corporations were thereafter subject to the Political Code provisions. It was not so construed, however, but was held applicable only to cities thereafter created⁶¹ in the manner specified in the Code, that is, by being declared to be a "municipal corporation" by "an act of the legislature". Several cities were declared to be municipal corporations under these Political Code provisions⁶² during this period.

On the whole, the provisions for incorporation of cities, towns and villages under general laws were of no great importance since only a very few small cities and towns were ever affected by them.

The foregoing review would seem to establish that actual interference by the legislature in municipal affairs was, if not the rule, at least very close to being the rule and in any event, very common. It should not be supposed, however, that cities acquiesced in such interference without raising a protesting voice. On the contrary, they made determined and repeated efforts to persuade the courts that provisions of the 1849 constitution, or the "spirit" thereof, forbade such interference. In the first two decades of this period their efforts along these lines came to nothing, the courts early announcing and for many years adhering to the doctrine of complete legislative supremacy. In *People v. Board of Supervisors of San Francisco*,⁶³ a special law directed the San Francisco supervisors to pay a claim and the auditor to draw his warrant therefor. The law was attacked as contrary to the 1849 constitution, counsel setting up the claim

⁶⁰ CAL. POL. CODE § 4356.

⁶¹ *Ex parte Simpson* (1873) 47 Cal. 127, 128, held the Political Code provisions respecting police courts were not applicable to San Francisco.

⁶² *Eureka*, Cal. Stats. 1873-4, p. 91; *Visalia*, *ibid.* at p. 171; *Santa Barbara*, *ibid.* at p. 330; *Marysville*, Cal. Stats. 1875-6, p. 149, and *San Luis Obispo*, *ibid.* at p. 361. The language of these acts was substantially similar and the act incorporating *Eureka* is illustrative. It read (*ibid.* 1873-4, p. 91, § 1), "The territory described in section two of this Act, and the inhabitants therein residing, are hereby declared to be a municipal corporation, under the provisions of the Political Code of this State, to be known in law as the 'City of Eureka'."

⁶³ (1858) 11 Cal. 206.

that under such constitution cities were not subject to the control of the legislature except by general laws. Explaining his lack of authority for such a position counsel asserted, "Like parricide, against which the Romans had no law, because the crime was thought impossible, such an usurpation by the legislature has never been contemplated or guarded against, and no Supreme Court of any State ever had to pass upon a doctrine so monstrous. . . ." ⁶⁴ But the court turned a deaf ear and upheld the "monstrous" doctrine, reasoning that since all the powers and duties of "these local governments" come from legislative grant and paying their debts is a legitimate function and duty "it is not possible for us to see why the Legislature may not as well control and direct in this matter as in any other matter of municipal regulation. . . ." ⁶⁵

A similar decision was rendered the following year in *Pattison v. Board of Supervisors* ⁶⁶ where a law required the board of supervisors of a county to submit to the voters of the county the question whether the board should subscribe \$200,000 to the stock of a railroad. The court specifically rejected the argument that the power of the legislature to pass such a law was withheld "by the spirit, meaning and true intent of the Constitution". It also indicated that counties and cities were governed by the same principles in this respect. In *People ex rel. Blanding v. Burr*, ⁶⁷ also decided in 1859, the court upheld a statute making it obligatory on the sinking fund commissioners of San Francisco to issue bonds to pay a debt which had been incurred contrary to the debt limitation provisions of previous charters. The court could find nothing in the constitution which prevented the legislature from passing such a law, and said that cities are mere instrumentalities of the legislature and "Their powers are subject to be increased, restricted, or repealed at the will of the Legislature, according to the varying exigencies of the State. . . ." ⁶⁸ The court observed that "The security against the abuse of the power of the Legislature is to be found in the wisdom and sense of justice of its members, and their relation to their constituents." ⁶⁹

⁶⁴ *Ibid.* at 207.

⁶⁵ *Ibid.* at 211.

⁶⁶ (1859) 13 Cal. 175, 183. The court approved the view attributed to Justice Daniel of the United States Supreme Court "that if the Judges were to adopt the notion that a law might be declared unconstitutional, because of its supposed repugnancy to the spirit of the Constitution, they ought to employ a rapping medium to procure authentic revelations from that spirit."

⁶⁷ (1859) 13 Cal. 343.

⁶⁸ *Ibid.* at 351. (Italics added.)

⁶⁹ *Ibid.* at 350.

It is particularly noteworthy that the court cited with approval, reviewed, and in effect made its own, the leading New York case of *Town of Guilford v. Supervisors of Chenango County*,⁷⁰ which upheld perhaps one of the most flagrant examples of legislative interference in municipal affairs found in books. In this case the town commissioners of highways had been held liable for costs and counsel fees in a suit brought by them involving town affairs. They sued the town for reimbursement and failed on the ground that they had had no authority to bring the suit occasioning the expenses. The commissioners then applied to the legislature for relief and the legislature passed a law directing the submission of the question to the town voters. The voters rejected the proposal for reimbursement by a large majority. Another application was made to the legislature which this time passed a law requiring the county judge to appoint three commissioners to take proof of the amount of the claim, to render an award thereon and made it the duty of the county board of supervisors to cause a tax to be levied on the property in the town to pay such award. This law was sustained.

The approval of this case together with the holdings in the foregoing California cases seemed to establish the doctrine of legislative supremacy under the 1849 constitution and for more than the next decade the court steadfastly adhered to this view in the face of repeated attempts to have it change its course in this respect.⁷¹ In

⁷⁰ (1855) 13 N. Y. 143.

⁷¹ *People v. Seymour* (1860) 16 Cal. 332, 345, upheld an act validating a tax levy of the City and County of Sacramento, the court citing the Blanding and Pattison cases. *Underhill v. Trustees of Sonora*, *supra* note 26, upheld a law extending the statute of limitations on the bonds of the city, also saying that such a law would be valid even without the assent of the city "by virtue of the control which the Legislature possesses over these municipal bodies." *Kelsey v. Trustees of Nevada*, *supra* note 24, upheld an act raising the tax limit on the city which had been imposed by its original charter, holding that the legislature had the same power to increase the tax levy as to limit it and cited the Blanding and Pattison cases. *California N. R. R. v. Butte County* (1861) 18 Cal. 671, assumed that a county could lawfully be required to issue bonds by legislative act if a majority of the voters approved. *People v. Alameda County* (1864) 26 Cal. 641, upheld a law requiring Alameda County to pay an equitable claim due Contra Costa County on division of the latter, approved the *Town of Guilford* case, *supra* note 70, and said that the legislature could recognize claims founded in equity and justice "in the largest sense of these terms, or in gratitude or charity". *Napa Valley R. R. v. Napa Co.* (1866) 30 Cal. 435, upheld a law "authorizing", but construed as requiring, the county to issue bonds in aid of a railroad, without an election. The court noted that counsel admitted "in a general way" the power of the legislature to compel a county to subscribe to the stock of a railroad "within its limits or without them" and "irrespective, too, of the wishes of its inhabitants, except as expressed through their repre-

fact the courts not only refused to read into the constitution any implied limitations on the legislative power but also refused even to construe statutes which were plainly susceptible to the construction of merely conferring an authorization upon cities to be exercised in their discretion, as having such construction, but instead construed them as being mandatory in many cases, as noted above. Thus in *People v. San Francisco*,⁷² an act purporting to *authorize* the San Francisco Board of Supervisors to modify the grades of certain named streets, was held to *require* the board to make the change in question. To the argument of counsel that "it would be a most extraordinary proceeding for the Legislature to undertake, by a mandatory Act, to *compel* a local improvement of this character to be made, whether those interested desired it or not",⁷³ and that "such a construction ought not to be given to the Act, unless its terms imperatively require it", the court replied,

"But legislation of this character is not so entirely without a precedent in this State as to justify the rigid rule of construction invoked by the counsel. In numerous instances the Legislature has commanded municipal bodies to perform acts of a purely local nature, and affecting only the interests of small portions of the community. Indeed, municipal corporations are but the creatures of the Legislature and intended to aid the legislative branch of the Government in the administration of local affairs. It may not be wise or politic in the Legislature to do directly what, perhaps, might be better done through the instrumentality of municipal corporations. But this is an argument to be addressed to the Legislature, and not to the Courts."⁷⁴

Clearly, down to this time the advocates of municipal home rule had made little progress with the California courts. A better day for them was in the offing, however. The first indication that a change of view might be imminent came in 1871 in the case of *Stockton & Visalia Railroad v. Common Council of City of Stockton*,⁷⁵ in which the court upheld a law directing the city to issue bonds in the amount

sentatives in the Senate and Assembly" (*ibid.* at 437). *Beals v. Amador County* (1868) 35 Cal. 624, upheld a law requiring Amador County to pay its equitable share of the interest on the debt of Calaveras County, incurred while Amador County was still a part of Calaveras County, and to levy a tax to pay such share. The court relied on the Blanding case and the Town of Guilford case.

⁷² (1869) 36 Cal. 595.

⁷³ *Ibid.* at 600.

⁷⁴ *Ibid.* at 601.

⁷⁵ (1871) 41 Cal. 147

of \$300,000 to aid in the construction of a railroad between Stockton and Visalia. Justice Wallace wrote a lengthy opinion, concurred in by Chief Justice Rhodes. He said it was unavailing for counsel to complain that "it is notorious that the facility of influencing legislative bodies is such that the passage of any measure can be secured through the usual appliances,"⁷⁶ and asserted that "even if, unfortunately, this be true, it is also true that we have no authority to reform these 'legislative bodies', nor to call them to account for the manner in which they may have conducted the public business intrusted to their hands."⁷⁷ To the argument that the present act should be held to be contrary to "the spirit" of the constitution, the justice replied that "The 'spirit of the Constitution' as a means to ascertain the powers of other departments, would partake too much of the personal spirit of the individual Judges chosen for the time being to interpret that instrument, and, chameleon-like, it would be apt to prove white, or gray, or red, or bluish, or bottle green, as the peculiar views of those having the spirit in their keeping might give it color."⁷⁸ Pointing to the struggle between the Crown and Parliament in English history over which had the power to tax and recalling that Parliament had won that struggle after revolution, he also noted that the American revolution had resulted from the same struggle and to establish that taxation should be imposed on the people only through their chosen representatives. Concluding that the framers of the 1849 constitution, by requiring the legislature to limit the powers of taxation and spending by cities and counties, had negated any intention to limit the legislature in dealing with cities, he found the act valid. While the law was upheld, three of the five justices participating, namely, Crockett, Sprague and Temple, indicated their disapproval of the theory of absolute legislative supremacy as an original proposition and concurred only on the ground of *stare decisis*, and one of these, namely, Justice Temple, indicated that "if the question were new" he would be "inclined" to hold otherwise. And later on during the same year, the court in *Sinton v. Ashbury*⁷⁹ upheld a law requiring the city to pay the claim for compensation of commissioners appointed under a previous act to extend Montgomery Street, San Francisco, and to levy assessments on property benefited

⁷⁶ *Ibid.* at 158.

⁷⁷ *Ibid.* at 158.

⁷⁸ *Ibid.* at 162.

⁷⁹ (1871) 41 Cal. 525.

to pay therefor. In upholding the act, however, Justice Crockett, speaking for the court, stated, ". . . I am not aware that any case has gone so far as to hold that the legislature may devote the funds of a municipal corporation to purposes confessedly private and *having no relation to municipal affairs*."⁸⁰ But it was very clear, the court held, that where the affair was municipal as here, the legislature "has the constitutional power to direct and control the affairs and property of a municipal corporation for *municipal purposes*,"⁸¹ and cited the previous cases referred to above. Here, then, is a recognition that even though no express provision of the 1849 constitution so declared, an act of the legislature directing the spending of the funds of a municipal corporation for a purpose "having no relation to municipal affairs" was unlawful.

The doctrine of legislative supremacy was applied again, however, in the case of *Creighton v. San Francisco*,⁸² also decided in 1871. Creighton, a street contractor, had completed street work but was unable to recover against the city and county because of failure to comply with charter requirements.⁸³ He applied to the legislature, which thereupon passed a law which "authorized and directed" the city and county to pay to Creighton the sum of \$13,500. In a suit to compel the city and county to pay this sum the latter contended unsuccessfully that the act could not prevail "against the will and consent of the City and County of San Francisco."⁸⁴ The court stated that the legislature had power to appropriate the moneys of municipal corporations in payment of claims ascertained by it to be due equitably to individuals even though such claims be not enforceable in the courts.⁸⁵

The last case of this period to reiterate the principle of legislative supremacy was *City of San Francisco v. Canavan*,⁸⁶ decided in January 1872. All of the justices—Chief Justice Sprague and Justices Crockett, Rhodes, Niles and Wallace—joined in a decision upholding an act authorizing the governor to appoint three commissioners to superintend the work of erecting a city hall in San Francisco and directing such commissioners to take possession of Yerba Buena

⁸⁰ *Ibid.* at 530. (Italics added.)

⁸¹ *Ibid.* at 530.

⁸² (1871) 42 Cal. 446.

⁸³ *Creighton v. Manson* (1865) 27 Cal. 613, 629.

⁸⁴ *Creighton v. San Francisco*, *supra* note 82, at 449.

⁸⁵ *Ibid.* at 450, citing *Blanding v. Burr*, *supra* note 67.

⁸⁶ 42 Cal. 541.

Park, which belonged to the city and county, and to grade the park, subdivide it, sell the lots and use the proceeds to help build the city hall. The act was attacked by San Francisco as unconstitutional—as a violation of local self-government and of the proprietary rights of cities. It was urged that the 1849 constitution “by necessary implication” of the provision requiring the legislature to organize county, city and town governments for the administration of their local affairs “intended to prohibit the Legislature from usurping the functions of these municipal bodies by taking upon itself, through its constituted agents, against the will and without the consent of the municipal authorities, the performance of duties which pertain only to the municipal body itself.”⁸⁷ But the court rejected the argument once more and held it to be well settled “in this state at least” that municipal corporations are but subordinate subdivisions of the state government, “which may be created, altered, or abolished, at the will of the Legislature, which may enlarge or restrict their powers, direct the mode and manner of their exercise, and may define what acts they may or may not perform. . . .”⁸⁸ The court also observed that on the theory of the city and county “it would be difficult, if not impracticable, to define the line at which the power of the Legislature to interfere in the affairs of a municipal corporation would terminate.”⁸⁹

But two events were destined to bring about a change in the “well settled” rule referred to in the *Canavan* case. One was the ascendancy to the supreme court in 1874 of Justice McKinstry, who appears to have been an ardent advocate of municipal home rule. The other was the opinion of Justice Cooley of the Supreme Court of Michigan in *People ex rel. Le Roy v. Hurlbut*,⁹⁰ decided in November 1871. Departing from orthodox theory, this eminent judge announced the principle of an inherent right of local self-government beyond legislative control. This principle was held by Judge Cooley to condemn a law appointing designated persons as members of the board of public works of the City of Detroit, to have general charge of city buildings, property and local conveniences and power to make contracts for public works on behalf of the city and to do many other things of a legislative character, which, usually only

⁸⁷ *Ibid.* at 557.

⁸⁸ *Ibid.* at 557.

⁸⁹ *Ibid.* at 558.

⁹⁰ (1871) 24 Mich. 44, 93.

the common council has authority to do. He stated that the question before the court involved "an examination of principles which underlie free institutions in America", and "whether local self-government in this state is or is not a mere privilege conceded by the legislature in its discretion, and which may be withdrawn at any time at pleasure".

In reasoning that contrary to "the judicial decisions" and notwithstanding that "law writers generally assert" the contrary, the answer to this question should be in the negative, the justice noted first that if there be no restraints on the legislature, local governments could be abolished and the people be subjected to the rule of "commissions appointed at the capital" and thus be kept in a state of pupilage and dependence to any extent, and for any period of time the state might choose."⁹¹ "We must assume," said Justice Cooley, "either an intention that the legislative control should be constant and absolute, or, on the other hand, that there are certain *fundamental principles in our general framework of government*, which are within the contemplation of the people when they agree upon the written charter," and "That this last is the case, appears to me too plain for serious controversy." This was so, he said, because the constitution was framed with these implied restrictions on local government in view "and we should fall into the grossest absurdities if we undertook to construe that instrument on a critical examination of the terms employed, while shutting our eyes to all other considerations"; that the liberties of the people have generally been supposed to spring from, and be dependent upon, that system; that in the colonies local government preceded central government; and that otherwise legislative control could be partial and purely arbitrary and self-government of towns would make way for a government by "such influences as can force themselves upon the legislative notice at Lansing", excessive compensation would be given and obtained, the legislature would not be responsible to local sentiment, and municipal governments would become the spoils of party.⁹²

While the opinion of Judge Cooley had been rendered about a month prior to the decision in *City of San Francisco v. Canavan*,⁹³ it was apparently not then available to the court or counsel for it was not cited in the briefs or the opinion therein. But in the next

⁹¹ *Ibid.* at 97.

⁹² *Ibid.* at 97-98, 106. (Italics added.)

⁹³ *Supra* note 86.

case to come before the court on this question—*People v. Lynch*,⁹⁴ decided in 1875—Justice McKinstry seized with great alacrity upon the opinion of Judge Cooley, and also induced two other members of the five man court—Justices Crockett and Niles—to agree with him in an opinion which swept aside the learning of previous cases in this state and the principle of legislative supremacy and announced the doctrine of an inherent right of local self-government. It appeared that the charter of the City of Sacramento had vested the board of trustees of the city with power to order local improvements and to levy assessments on property benefitted in order to pay therefor. The board had ordered a street improvement and assessment but had failed to follow the procedure set forth in the charter, for which reason the assessment was void. Subsequently the legislature passed an act purporting to validate the assessment.

Obviously the *Lynch* case differed in no essential particular from *Creighton v. San Francisco*,⁹⁵ considered above. In a suit to recover the assessment the court held the act unconstitutional, for three separate and distinct reasons, namely, (1) that the assessment sought to be validated was wanting in equality and uniformity; (2) that in California the power of "assessment" as distinguished from the power of taxation as ordinarily employed, cannot be directly exercised by the legislature within the limits of an incorporated city, in view of the implication of section 37 of article IV requiring the legislature to restrict the power of assessment in cities—an implication that the power of assessment must be exercised *through* the city; and (3) that the act violated the inherent right of local self-government.

Because the court discussed the first two grounds first and because it could have rested its opinion on them alone, it has been common to regard the discussion of the third ground by Justice McKinstry as dicta. But in view of the fact that the Justice rested his decision equally on all three grounds, it is quite clear that all three constitute alternative grounds of decision and that the discussion on the third point was therefore not dicta but holding.⁹⁶ This

⁹⁴ (1875) 51 Cal. 15.

⁹⁵ *Supra* note 82.

⁹⁶ The well settled rule in this regard is declared in *Pugh v. Moxley* (1912) 164 Cal. 374, 377, 128 Pac. 1037, 1038, as follows: "Where a decision is based upon two independent lines of reasoning, neither one can be said to be mere dictum. One is as necessary to the decision as the other." To like effect see *King v. Pauly* (1911) 159 Cal. 549, 554, 115 Pac. 210, 212; and *Butler v. Wyman* (1933) 128 Cal. App. 736, 741, 18 P. (2d) 354, 356.

being true, the third point discussed in the opinion of Justice McKinstry becomes of great importance. After denying that "we can never hold a law void, unless we can find in the Constitution some specific inhibition which, in precise language, refers to the particular law", he asserted that "Human ingenuity would fall short of anticipating every possible *mode* by which might be consummated an abuse of legislative power, which the people, in constitutional convention desired to guard against."⁹⁷ He then stressed article XI section 9 and article IV section 37 as indicating that the framers understood the value of cities "to a great and free people" and reviewed Roman, medieval and colonial history. He noted that "The extreme inconvenience, to say the least" of interference by special legislation, "with the innumerable details of administration in every locality, especially in the more densely populated portions of our territory," is manifest "to all practical men"; that it was "to do away with frequent interference by the central power with matters of purely local concern, that cities and incorporated villages had been created in every State of the Union" that "the very idea of an American city involves the notion of a local government; of local officers selected by the inhabitants, and that these officers should exercise their own judgment in respect to the internal affairs committed to their charge;" and that while the legislature can alter or repeal a city charter, "it does not follow that the Legislature can deprive the aldermen, councilmen, supervisors or trustees of a city of all discretion in the discharge of their functions as such."⁹⁸ The justice said the legislature could "perhaps" provide for an inquiry into the propriety and feasibility of a municipal matter if its action is advisory only "But the definite and ultimate determination, which shall conclude the taxpayers of a city, must be that of the appropriate local legislature."⁹⁹ He rejected as without force the suggestion "that the doctrine here asserted will lead to a nullification of general laws, or to a *communism* as objectionable as an extreme centralization."¹⁰⁰ Prior California cases were held not a bar to this holding, mainly on the ground that the earlier cases assumed the point without argument and that the later cases simply cited such cases as conclusive without making an independent examination of the question.¹⁰¹ The

⁹⁷ *People v. Lynch*, *supra* note 94, at 26.

⁹⁸ *Ibid.* at 30-31.

⁹⁹ *Ibid.* at 33.

¹⁰⁰ *Ibid.* at 34.

¹⁰¹ *Ibid.* at 35-39.

court concluded by saying that it has often happened in the history of the states, that the framers of a constitution "have been more provident than perhaps they themselves understood", and that if "after-events have made apparent the enormity of an evil, and upon fuller consideration a court is satisfied that a former judgment is wrong, it ought not to be precluded from asserting the correct rule. . . ." ¹⁰²

It is clear, therefore, that *People v. Lynch* definitely repudiated the long line of cases reviewed above which declared the doctrine of legislative supremacy. The late Professor Howard Lee McBain of Columbia University asserted that the opinion of Justice McKinstry was that of himself only and was not concurred in by any other justice.¹⁰³ But Professor McBain erred in making this assertion, for it is quite clear that the opinion was concurred in by two other members of the five man court—Justices Crockett and Niles.¹⁰⁴ The other members of the court, Justices Wallace and Rhodes, who had concurred in the *Stockton & Visalia Railroad* opinion,¹⁰⁵ concurred only on the first two grounds of the opinion of Justice McKinstry and refused to agree with his views on local self-government. But Justice Rhodes indicated that he thought there was considerable merit in the opinion of the court on the latter point also, but felt constrained to refuse to go along solely on the ground of *stare decisis*. He asserted that while the view "might, perhaps, with propriety, have been accepted and applied at the commencement of the judicial history of the State . . . at an early day a different construction was

¹⁰² *Ibid.* at 39.

¹⁰³ MCBAIN, *op. cit. supra* note 5, at 5, 14; McBain, *op. cit. supra* note 6, at 203.

¹⁰⁴ Professor McBain probably fell into this error owing to a lack of familiarity with California Supreme Court practice. The opinion in *People v. Lynch* purported to be one "By the Court, McKinstry J." (*supra* note 94, at 18) and two members of the court, *viz.*, Wallace, C. J., and Rhodes, J., wrote special concurring opinions (*ibid.* at 40-41). Professor McBain assumed from this that there were only three members on the court. He overlooked the fact that the supreme court was a five-man court at this time and that his conclusion obviously leaves two judges unaccounted for. A consideration of the practice of the supreme court as of this date makes it clear that the two other members of the court, *i.e.*, Justices Crockett and Niles, joined in the opinion of Justice McKinstry, for at this date it was customary for one justice to write an opinion for the court and if the other justices concurred therein nothing else was said in the reports. Majority opinions were not signed by concurring justices as was the practice after 1879. Consequently unless the contrary appeared in the reports an opinion of one justice speaking for "the court" as of that time must be taken to have meant all other members of the court concurred. An examination of the opinions immediately preceding and immediately following *People v. Lynch* reveals very plainly the customary practice in this regard and demonstrates conclusively that Professor McBain erred.

¹⁰⁵ *Supra* note 75.

adopted” and that construction should be changed if at all only by a change in the constitution itself.¹⁰⁶

It is thus very clear that the case of *People v. Lynch* repudiated the doctrine of legislative supremacy and adopted the theory of an inherent right of local self-government. The case was followed on similar facts in the subsequent case of *Brady v. King*.¹⁰⁷ Its principle was held not applicable to laws which were permissive only and not mandatory in *Bank of Sonoma County v. Fairbanks*.¹⁰⁸

Two years after the decision of *People v. Lynch*, Chief Justice Wallace, who had spoken so eloquently against the doctrine of implied limitations in earlier years now spoke in quite a different vein in holding invalid an act of the legislature requiring the City of Sacramento to pay damages for the flooding of lands caused by levee commissioners appointed for the City of Sacramento by special act of the legislature. This occurred in *Hoagland v. City of Sacramento*.¹⁰⁹ The court, consisting only of Justices Wallace, Rhodes and Crockett, while holding that the act “is one in excess of the legislative authority”, pointed to no specific constitutional provision which was violated but contented itself with saying that the legislature “cannot, even against a municipal corporation, create a claim without the consent of those who are to be taxed with its payment”, that “Such a procedure, while taking on the form of a statutory enactment, would amount to mere spoliation.”¹¹⁰ It is to be noted that while prevailing counsel relied heavily on *People v. Hurlbut*¹¹¹ and *People v. Lynch* and their views on local self-government,¹¹² the court did not refer to these two cases. This is perhaps explainable on the theory that since two of the three members of the court were Justices Wallace and Rhodes, who had previously refused to agree with the views of Justice McKinstry in *People v. Lynch* on local self-government, they felt constrained to invent some new kind of implied limitation which would be more consistent with their previous position, and so seized upon the principle of no taxation without representation. But all this cannot conceal the real fact, which is that all of the five members of the court had now been won over

¹⁰⁶ *People v. Lynch*, *supra* note 94, at 40.

¹⁰⁷ (1878) 53 Cal. 44.

¹⁰⁸ (1877) 52 Cal. 196.

¹⁰⁹ *Supra* note 7.

¹¹⁰ *Ibid.* at 150.

¹¹¹ *Supra* note 90.

¹¹² *Hoagland v. City of Sacramento*, *supra* note 7, at 144-145.

to the doctrine of implied limitations on the power of the legislature to interfere with the affairs of municipal corporations.

It is therefore beyond doubt that at the time the framers of the constitution of 1879 had assembled in convention the supreme court had completely abandoned the doctrine of absolute legislative supremacy over municipal corporations and had announced three implied limitations on the legislative power of interference with their affairs, namely,

(1) That the legislature could not interfere by mandatory legislation with the affairs of municipal corporations; that such interference violated the inherent right of local self-government.

(2) That the legislature could not create claims against a municipal corporation for municipal purposes without the consent of those who were to be taxed for its payment, and

(3) That the legislature could not create claims against the funds or property of municipal corporations which were not for municipal purposes.

Had these three implied constitutional limitations been applied to all of the special legislation of earlier years it is manifest that the most objectionable of that legislation would have been held unconstitutional. It would appear, therefore, that even before the framers of the 1879 constitution assembled, the judiciary had gone a long way toward emancipating municipal corporations from arbitrary legislative interference—a fact which seems to have been completely lost sight of by both courts and commentators.

We pass now to a consideration of the provisions of the constitution of 1879.

PROVISIONS OF THE CONSTITUTION OF 1879

While it is quite plain from the foregoing discussion that legislative interference with municipal corporations and their affairs was quite frequent before 1879, it is not clear that public reaction to such interference contributed in any substantial degree to the movement for a new constitution—a movement which appears very clearly to have been caused primarily by quite different considerations.¹¹³

¹¹³ SWISHER, *MOTIVATION AND POLITICAL TECHNIQUE IN THE CALIFORNIA CONSTITUTIONAL CONVENTION 1878-1879* (1930) 5-31, in which there is no mention of the past treatment of cities as a contributing cause to the calling of the convention. And some newspaper comment current at the time indicated that it was not even regarded as an evil by some but on the contrary was to be preferred to local self-government. Thus an article in the *San Francisco Bulletin* for December 10, 1878, asserts that San

There is abundant evidence, however, of much dissatisfaction with the old system in many quarters,¹¹⁴ so that once the delegates had assembled in convention most of them were strongly impressed

Francisco was satisfied with the Consolidation Act of 1856 and that there had been no demand from the people of San Francisco for any change; that complete control by the city would be unwise. BANCROFT, SCRAPs W-15, p. 986. The San Francisco Chronicle for January 22, 1879, asserts that the experience of American cities has not favored the proposition to make them independent of legislative control and that "Legislatures have often stood as the last and effectual bulwark between municipal taxpayers and thieving rings"; that "in the swarm of municipal life the trickster can better practice his vocation" and charged that the freeholders charter provision of the new Constitution was pressed by the Workingmen's delegation of San Francisco "who, no doubt, considered themselves in a majority in the city, and were anxious to have it surrendered absolutely to their control, without the intervention of the more respectable and conservative classes of the interior". BANCROFT, SCRAPs W-15, p. 1036. Articles to similar effect appeared in the San Francisco Bulletin for January 22, 1879, the San Jose Herald for January 20, 1879, and the Vallejo Chronicle for January 21, 1879. BANCROFT, SCRAPs W-15, p. 1036.

¹¹⁴ Thus in an article by delegate Volney E. Howard in the San Francisco Bulletin for March 22, 1879, it was said that all "jobs" have originated with some interested and scheming individuals in the towns and were rushed through the Legislature by means of "the lobby" and generally before the same were even known "to the citizens who are to be fleeced for their consummation". He recounted how "at the legislature before last" a few persons in Los Angeles, "who had their own ax", got up a scheme for the establishment of a Board of Public Works which practically superseded the city government and transferred its revenue to the new Board. He said they dispatched an agent to Sacramento who engineered it through the Legislature—"a measure which was never heard of by the people or city government until the agent returned with the law in his pocket". BANCROFT, SCRAPs W-16, p. 1720. In an article in the San Francisco Chronicle for March 24, 1879, Mr. Howard referred to "the enormous abuse which has hitherto prevailed of amendments to the city charters procured for the emolument of jobbers which are seldom heard of until after they are adopted." BANCROFT, SCRAPs W-16, p. 1743. The San Francisco Chronicle for March 29, 1879, remarked that "all of the changes made in the original Hawes charter [*i.e.*, the Consolidation Act of 1856] were secured from pliable Legislatures at the earnest instigation of local rings and interested parties—not on motion of the taxpayers, but generally against their known wishes and the public welfare". BANCROFT, SCRAPs W-16, p. 1772.

The evil consequences of special legislation had been pointed to in the Workingman's Party convention which met in 1871. In 1876 Mayor Bryant of San Francisco in his inaugural message, said, "It has been the custom for heads of departments in the city government, and sometimes even their subordinates, to ignore the board of supervisors and make direct application to the legislature in furtherance of schemes not designed for the public good so much as to increase their own profit, power and patronage". 2 YOUNG, SAN FRANCISCO (1912) 515.

Newspaper comment hostile to the old system was not uncommon in the years immediately preceding the calling of the convention. Thus in discussing a new charter which had just been proposed for San Francisco, the San Francisco Bulletin for January 20, 1876, observed that "At every session of the Legislature there is an attempt to substitute a new charter for San Francisco" that sometimes the reason for this is that "an ambitious mayor wants more power." Referring to the proposed new charter it said the charter "was cooked up by the mayor and board of supervisors" and not

with the desirability of changing that system. Thus in the course of the convention debate on the provisions relating to cities, one delegate said he believed it to be the desire of this body, and of the people, "to bring our local affairs as near home to the people as possible."¹¹⁵ Another delegate pointed out that the San Francisco charter or the Consolidation Act was originally only 31 pages long, but had grown to 319 pages including 100 supplemental acts; that "No man on earth knows what is in it, and they do not pay any attention to it either" but "ride rough-shod over it;" that "Dozens of these Acts have been passed in the interest of a single individual"; that "Some contractor or some officer would want to get a supplemental Act passed and he would slide up to the Legislature and get it through."¹¹⁶ Delegate Howard of Los Angeles said it was notorious "that every job is gotten up by a clique who have an axe to grind at home, and they send it to the Legislature and get it adopted, and the Legislature saddles it upon the people in the cities and towns." He said he spoke advisedly in the matter, for in the City of Los Angeles "about half a dozen fellows, with an axe to grind, got up a charter and sent it up here for ratification, unbeknown to the people of the city, and they got it adopted too"; that this law had "proceeded to organize a city government under the pretense of

discussed before the Board and no intimation was given the people that a new charter was to be proposed when it was precipitated on the legislature. Five days later the Bulletin added a further protest and said no one knew the Board was laboring on this charter until "the ominous volume was emitted" and that the expectation was that the people were to look on calmly "while their local government is being twisted out of all recognition." Articles in a similar vein relating to this matter appeared in the San Francisco Bulletin for January 26, 1876, and the Stockton Independent for January 27, 1876. The press opposition to this charter bore fruit, for the legislature did not pass it. See BANCROFT, SCRAPS W-69, p. 1-3. The San Francisco Alta for July 15, 1876, complained of street ventures and expenditures "for which the city has received no benefit and never will receive any" that "These four transactions were jobs got up by a comparatively few individuals, for the benefit of a few, and fastened upon our taxpayers by the carelessness, laziness, or rascality of a Legislature which appears to have been willing to play into the hands of anybody or class 'for a consideration.'" And the Oakland Times for March 22, 1878, stated that "For six successive years the people of this city were shielded from suffering great wrongs by the vigilance of their mayors Selby, Otis and Alvord, who employed capable and honest gentlemen at Sacramento to head off and prevent hostile legislation" and that "A thrill of fear and trembling runs through the whole body politic whenever the 'sagamos' of the state are to assemble in Legislative Session". BANCROFT, SCRAPS W-61, p. 115.

¹¹⁵ 2 DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF CALIFORNIA 1878-1879 (1881) 1049, hereinafter referred to as "DEBATES 1879".

¹¹⁶ *Ibid.* at 1060, delegate Reynolds.

organizing a Board of Public Works" that "so long as this thing is managed by the Legislature so long will these jobs and frauds prevail."¹¹⁷

Mr. Hager, who was chairman of the committee on city, county and township organization¹¹⁸ said that the power to legislate as to cities by special law was taken away by the proposed constitution "as it ought to be" and added, "I hope we have seen the end of it. Everyone knows the pressure upon Legislatures for special laws and special privileges"; that "It is the policy of modern Constitutions to deprive the legislature of these mischievous powers, and I hope California will follow in this line of constitutional reform."¹¹⁹ Another delegate stated the convention was acting on the theory "that local legislation ought to be left to the localities which it is intended to affect."¹²⁰ Still another added "It appears to me that the object of the people in having the Convention called—or one of the leading objects—was to have as much of the local legislation taken away from the Legislature as possible, and given to the different counties and cities. The intention was to give the management of local affairs more to the people of the different localities, who are fully conversant with their own wants and wishes."¹²¹ Another stated that "Our whole object in framing this Constitution has been to give local self government . . . to allow the people of a particular locality to frame for themselves, as far as consistent, legislation applicable to that locality."¹²² Mr. Hager observed "It is the policy now to give the people more direct control, and take away from the Legis-

¹¹⁷ *Ibid.* at 1062, Mr. Volney Howard of Los Angeles. Mr. Howard was referring to Cal. Stats. 1875-6, p. 856. See *supra* note 37. This act created a board of public works consisting of three members to be appointed by the governor initially, but thereafter to be elected by the voters of the city, the board to have "complete and exclusive control over and management of the construction, repairs, and maintenance of all zanjas, dams, bridges, streets, sewers, alleys, gas and gas-works, water and water-works, public parks, and buildings, and all other public works, and of everything pertaining thereto" and also having "exclusive power to contract for the construction and repairs of all public works embraced within the provisions of this Act", and "complete control over the expenditure of all money expended for the purposes in this Act contemplated," and also "*to have full and complete control over all city officers* [the City Attorney alone excepted], so far as is necessary to carry out the object of this Act." (Italics added.)

¹¹⁸ 2 DEBATES 1879, *op. cit. supra* note 115, at 1040.

¹¹⁹ *Ibid.* at 1063.

¹²⁰ *Ibid.* at 1063, delegate Winans.

¹²¹ *Ibid.* at 1063, delegate Brown.

¹²² 3 *Ibid.* at 1484, delegate Beerstecher.

lature the power to pass special laws. That is the platform on which we of San Francisco were elected."¹²³

That most of the delegates were in accord with the foregoing sentiments is manifest from the fact that the convention proceeded to adopt a series of specific limitations upon the power of the legislature to interfere with the government and affairs of municipal corporations and also at the same time, vested in such corporations extensive powers of local self-government. These provisions have survived in substance to this day and may be briefly and very generally summarized as follows (they will hereafter be discussed in greater detail): (1) prohibition of special legislation respecting cities and provision for the incorporation of cities under general law;¹²⁴ (2) direct vesting in cities and towns by the constitution itself, of power to make and enforce within their limits "all such local, police, sanitary and other regulations as are not in conflict with general laws";¹²⁵ (3) taking from the legislature the power to impose taxes upon cities or towns or upon the inhabitants or property thereof, for city, town or other municipal purposes;¹²⁶ (4) prohibiting the legislature from delegating to any special commission, private corporation, company, association or individual "any power to make, control, appropriate, supervise or in any way interfere with any county, city, town or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments or perform any municipal functions whatever. . . ." ¹²⁷ (5) giving to any city having a population of 100,000 or more (subsequently amended to give any city having a population of 3500 or more) the power to frame a "freeholders charter" for its own government.¹²⁸

It is obvious at a glance that the foregoing provisions hit directly at, and clearly operated to prohibit, much of the legislation referred to above, and therefore largely obviated any further necessity or occasion for relying on the doctrine of an inherent right of local self-government, so ably expounded by Justice McKinstry in *People v.*

¹²³ 3 *Ibid.* at 1406.

¹²⁴ CAL. CONST. art. XI, § 6, art. IV, § 25.

¹²⁵ CAL. CONST. art. XI, § 11.

¹²⁶ CAL. CONST. art. XI, § 12.

¹²⁷ CAL. CONST. art. XI, § 13.

¹²⁸ CAL. CONST. art. XI, § 8. In 1887 privilege was extended to cities having a population of 10,000 or more and in 1890 to cities having a population of 3500 or more.

Lynch,¹²⁹ or the doctrine of no taxation without representation, accepted by *Hoagland v. Sacramento*.¹³⁰ Accordingly, there was very little left on which the doctrine of these cases could operate after 1879. It is not surprising, therefore, that very little was said about either them or their doctrine after that date. While several cases condemned special laws passed before 1879 and cited *People v. Lynch* in so doing,¹³¹ and while there were several other instances of continued judicial recognition of these implied limitations,¹³² they were

¹²⁹ *Supra* note 94.

¹³⁰ *Supra* note 7.

¹³¹ *People v. Houston* (1880) 54 Cal. 536, held invalid a special act passed in 1876 authorizing a board of three commissioners, appointed by the county board of supervisors to levy an assessment on lands within a reclamation district. The court said simply that "The Constitution admitted of no such legislation. *People v. Lynch*, 51 Cal. 34; *Brady v. King*, 53 Id. 44" (*ibid.* at 539) thus extending the rule of *People v. Lynch* to reclamation districts. It should be noted that *page 34* of the opinion of *People v. Lynch* was cited and this part of the opinion deals with the inherent right of local self-government. In *Schunacker v. Toberman* (1880) 56 Cal. 508, a special act of 1878 attempting to provide for the issue of city bonds to pay a void street assessment was held void on the authority of *People v. Lynch*. *People v. McCune* (1880) 57 Cal. 153, followed *People v. Lynch* and *Brady v. King*, *supra* note 107. *Fanning v. Schammel* (1886) 68 Cal. 428, 9 Pac. 427, and *Kelly v. Luning* (1888) 76 Cal. 309, 18 Pac. 335, both condemned special acts passed prior to 1879, attempting to legalize void street assessments of cities.

It was recognized, however, that laws which simply authorized action to be taken by the city and did not require it to be taken unless the legislative body thereof so ordered were not within the principle of *People v. Lynch* and were valid. *Bank of Sonoma County v. Fairbanks*, *supra* note 108, (upheld act authorizing city authorities to purchase land, construed as permissive); *Pacific Bridge Co. v. Kirkham* (1884) 64 Cal. 519, 2 Pac. 409 (upholding law authorizing city of Oakland to construct a bridge). Where laws were construed as not in fact depriving the legislative body of the city of discretion on whether an improvement or expenditure should be made, they were held not to be condemned by *People v. Lynch*. *People v. Bartlett* (1885) 67 Cal. 156, 7 Pac. 417 (act creating city hall commissioners with power to complete construction of city hall for San Francisco held valid because of board of supervisors first had to give their approval to such completion by commissioners); *Lent v. Tillson* (1887) 72 Cal. 404, 411, 412, 14 Pac. 71, 73 (upholding act creating Dupont Street Commissioners with authority to widen said street where before they could proceed the San Francisco Board of Supervisors had to give its approval). In *People v. Bartlett*, *supra* at 157, the rule of *People v. Lynch* was held to require "that the ultimate determination, which shall conclude the tax-payers of a city with reference to a municipal improvement to be paid for by them, must be that of the appropriate local legislature."

¹³² *Britton v. Board of Com'rs* (1900) 129 Cal. 337, 61 Pac. 1115, held invalid the state primary election law, which permitted members of the opposing party to vote for party delegates to a party convention, on the ground that it violated "an implied restriction growing out of the nature of free governments." The court quoted Judge Cooley to the effect that "The right of local self government cannot be taken away, because all our constitutions assume its continuance as the undoubted right of the people, and as an inseparable incident to republican government." *Ibid.* at 344, 61

for the most part almost completely forgotten by both bench and bar. And in the fairly late case of *Golden Gate Bridge and Highway District v. Felt*,¹³³ it was said by way of dictum that the notion of an inherent right of local self-government is contrary to the great weight of authority "and cannot be said to have been adopted in this state."¹³⁴ But as seen above this statement is erroneous, for it takes no account of the fact that the doctrine was once adopted unequivocally in this state and has never been expressly repudiated. As a matter of fact, since the doctrine of an inherent right of local self-government had been so unequivocally accepted by the court at the time of the framing of the present constitution and since it was not expressly repealed by anything in that constitution it would seem arguable, even today, that the doctrine still exists and constitutes an additional guarantee against legislative interference which supplements the express guarantees found therein.

Such a view, if accepted, might come to be of considerable importance, for while even though most of the usual types of legislative interference are proscribed by the express provisions of the present constitution, some of them are not, as will hereafter appear, and notwithstanding, they could still be held invalid on the basis of these implied limitations. While it seems to this writer that such a result is undesirable, and that it would be better if the express constitutional limitations were to be regarded as exclusive, yet it is hard to deny that there is much logic in support of that result. Since the supreme court has never squarely met the point and has never yet recognized

Pac. at 1117. *Gadd v. McGuire* (1924) 69 Cal. App. 347, 362, 231 Pac. 754, 760, expressly recognized, by Justice Finlayson who later served on the supreme court, that "without doubt it is a fundamental principle in republican government that the people who are to pay the taxes for the support of the government must vote thereon, either directly or by their legal representatives, state taxes being levied under laws passed by the state legislature and local taxes under the votes of the people concerned or their duly authorized officers or agents." Justice Finlayson also cited *People v. Lynch* for the proposition that it was not necessary to find an express constitutional provision before a law would be held invalid. The court found, however, that the principle referred to was not violated in this case. The case is the most recent one to recognize that *People v. Lynch* still has vitality. *People v. Elkus* (1922) 59 Cal. App. 396, 211 Pac. 34, condemning a Sacramento charter provision for the Hare system of proportional representation, came close to relying on implied constitutional limitations, if it did not do so.

¹³³ (1931) 214 Cal. 308, 5 P. (2d) 585.

¹³⁴ *Ibid.* at 320, 5 P. (2d) at 591. The court cited *McBain, op. cit. supra* note 6, for this proposition and seems therefore to have accepted his analysis of *People v. Lynch*, which has been demonstrated above to be unsound.

that the doctrine had become definitely established in California at the time the present constitution was framed, it is not impossible—although admittedly improbable—that the court would accept the implied limitations of an inherent right of local self-government and of no taxation without representation—even today.

The main concern of this article, however, will be the construction of the express provisions of the 1879 constitution referred to above. A discussion of these provisions will commence in the next installment.

APPENDIX A.

FREEHOLDERS CHARTER CITIES OF CALIFORNIA AS OF OCTOBER, 1941

(County, 1940 population, citation of charter and previous status also indicated.)

ALAMEDA, Alameda, 36,256 (Cal. Stats. 1917, p. 1752; former freeholders charter Cal. Stats. 1907, p. 1051; Fifth Class Municipal Corporation Bill city from 1884 to 1907; special charter city from 1854 to 1884); **ALBANY**, Alameda, 11,493 (Cal. Stats. 1927, p. 2312; Sixth Class Municipal Corporation Bill city from 1908 to 1927, known as "Ocean View", from 1908 to 1909); **ALHAMBRA**, Los Angeles, 33,935 (Cal. Stats. 1915, p. 1740; Sixth Class Municipal Corporation Bill city from 1903 to 1915); **BAKERSFIELD**, Kern, 29,252 (Cal. Stats. 1915, p. 1552; Fifth Class Municipal Corporation Bill City from 1898 to 1915); **BERKELEY**, Alameda, 85,547 (Cal. Stats. 1909, p. 1208; former freeholders charter Cal. Stats. 1895, p. 409; special charter city from 1878 to 1895); **BURBANK**, Los Angeles, 34,337 (Cal. Stats. 1927, p. 2108; Sixth Class Municipal Corporation Bill city from 1911 to 1927); **CHICO**, Butte, 9,287 (Cal. Stats. 1923, p. 1436; Fifth Class Municipal Corporation Bill city from 1895 to 1923; special charter city from 1870 to 1895); **COMPTON**, Los Angeles, 16,198 (Cal. Stats. 1925, p. 1212; Sixth Class Municipal Corporation Bill city from 1888 to 1925); **EUREKA**, Humboldt, 17,055 (Cal. Stats. 1895, p. 355; special charter city from 1856 to 1895); **FRESNO**, Fresno, 60,685 (Cal. Stats. 1921, p. 1821; first freeholders charter Cal. Stats. 1901, p. 832; Fifth Class Municipal Corporation Bill city from 1885 to 1901); **GLENDALE**, Los Angeles, 82,582 (Cal. Stats. 1921, p. 2204; Sixth Class Municipal Corporation Bill city from 1906 to 1921); **GRASS VALLEY**, Nevada, 5,701 (Cal. Stats. 1921, p. 1889; former freeholders charter Cal. Stats. 1893, p. 628; special charter city from 1861 to 1893); **HUNTINGTON BEACH**, Orange, 3,738 (Cal. Stats. 1937, p. 2975; Sixth Class Municipal Corporation Bill city from 1909 to 1937); **INGLEWOOD**, Los Angeles, 30,114 (Cal. Stats. 1927, p. 2206; Sixth Class Municipal Corporation Bill city from 1908 to 1927); **LONG BEACH**, Los Angeles, 164,271 (Cal. Stats. 1921, p. 2054; second freeholders charter Cal. Stats. 1915, p. 1652; first freeholders charter, Cal. Stats. 1907, p. 1176; Sixth Class Municipal Corporation Bill city from 1888 to 1907); **LOS ANGELES**, Los Angeles, 1,504,277 (Cal. Stats. 1925, p. 1024; former freeholders charter, Cal. Stats. 1889, p. 455; special charter city from 1850 to 1889); **MARYSVILLE**, Yuba, 6,646 (Cal. Stats. 1919, p. 1467; special charter city from 1851 to 1919); **MODESTO**, Stanislaus, 16,379 (Cal. Stats. 1911, p. 1493; Sixth Class Municipal Corporation Bill city from 1884 to 1911); **MONTEREY**, Monterey, 10,084 (Cal. Stats. 1925, p. 1292; first freeholders charter, Cal. Stats. 1911, p. 1742; Sixth Class Municipal Corporation Bill city from 1889 to 1911; special charter city from 1850 to 1889); **NAPA**, Napa, 7,740 (Cal. Stats. 1915, p. 1591; former freeholders charter Cal. Stats. 1893, p. 641; special charter city from 1872 to 1893); **OAKLAND**, Alameda, 302,163 (Cal. Stats. 1911, p. 1551, charter completely revised by Cal. Stats. 1931, p. 2636; former freeholders charter Cal. Stats. 1889, p. 513; special charter city from 1852 to 1889); **OROVILLE**, Butte, 4,421 (Cal. Stats. 1933, p. 2904; Fifth Class Municipal Corporation Bill city from 1906 to 1933; special charter city from 1857 to 1859; apparently no municipal organization from 1859 to 1906); **PACIFIC GROVE**, Monterey, 6,249 (Cal. Stats. 1927, p. 2329; Sixth Class Municipal Corporation Bill city from 1889 to 1927); **PALO ALTO**, Santa Clara, 16,774 (Cal. Stats. 1909, p. 1175; Sixth Class Municipal Corporation Bill city from 1889 to 1909); **PASADENA**, Los Angeles, 81,864 (Cal. Stats. 1901, p. 884; Sixth Class Municipal Corporation Bill city from 1886 to 1901); **PETALUMA**, Sonoma, 3,034 (Cal. Stats. 1911, p. 1799; Fifth Class Municipal Corporation Bill city from 1884 to 1911; special charter city from 1858 to 1884); **PIEDMONT**, Alameda, 9,866 (Cal. Stats. 1923, p. 1564; Sixth Class Municipal Corporation Bill city from 1907 to 1923); **POMONA**, Los Angeles, 23,539 (Cal. Stats. 1911, p. 1913; Fifth Class Municipal Corporation Bill city from 1888 to 1911); **PORTERVILLE**, Tulare, 6,270 (Cal. Stats. 1927, p. 2172; Sixth Class Municipal Corporation Bill city from 1902 to 1927); **REDONDO BEACH**, Los Angeles, 13,092 (Cal. Stats. 1935, p. 2454; Sixth Class Municipal Corporation Bill city from 1892 to 1935); **REDWOOD CITY**, San Mateo,

12,453 (Cal. Stats. 1929, p. 2176; Sixth Class Municipal Corporation Bill city from 1897 to 1929; special charter city from 1868 to 1897); RICHMOND, Contra Costa, 23,642 (Cal. Stats. 1909, p. 1262; Sixth Class Municipal Corporation Bill city from 1905 to 1909); RIVERSIDE, Riverside, 34,696 (Cal. Stats. 1929, p. 2102; former freeholders charter Cal. Stats. 1907, p. 1277; Sixth Class Municipal Corporation Bill city from 1883 to 1907); ROSEVILLE, Placer, 6,653 (Cal. Stats. 1935, p. 2579; Sixth Class Municipal Corporation Bill city from 1909 to 1935); SACRAMENTO, Sacramento, 105,958 (Cal. Stats. 1921, p. 1919; second freeholders charter Cal. Stats. Ex. Sess. 1911, p. 305; first freeholders charter Cal. Stats. 1893, p. 545; special charter city from 1850 to 1893); SALINAS, Monterey, 11,586 (Cal. Stats. 1919, p. 1398; former freeholders charter, Cal. Stats. 1903, p. 599; special charter city from 1874 to 1903); SAN BERNARDINO, San Bernardino, 43,646 (Cal. Stats. 1905, p. 940; Fifth Class Municipal Corporation Bill city from 1886 to 1905; special charter city from 1854 to 1863; apparently no municipal organization from 1863 to 1886); SAN BUENAVENTURA, Ventura, 13,264 (Cal. Stats. 1931, p. 2737, held void and superseded by Cal. Stats. 1933, p. 2870; Fifth Class Municipal Corporation Bill city from 1905 to 1933; special charter city from 1866 to 1905); SAN DIEGO, San Diego, 203,341 (Cal. Stats. 1931, p. 2838; former freeholders charter Cal. Stats. 1889, p. 643; Fifth Class Municipal Corporation Bill city from 1886 to 1889; special charter city from 1850 to 1852 and from 1872 to 1886); SAN FRANCISCO, 634,536 (Cal. Stats. 1931, p. 2973; former freeholders charter Cal. Stats. 1899, p. 241; special charter city and county from 1856 to 1899; special charter city from 1850 to 1856); SAN JOSE, Santa Clara, 68,457 (Cal. Stats. 1915, p. 1869; former freeholders charter Cal. Stats. 1897, p. 592; special charter city from 1850 to 1897); SAN LEANDRO, Alameda, 14,601 (Cal. Stats. 1933, p. 3196; Sixth Class Municipal Corporation Bill city from 1892 to 1933; special charter city from 1872 to 1892); SAN LUIS OBISPO, San Luis Obispo, 8,881 (Cal. Stats. 1911, p. 1698; Sixth Class Municipal Corporation Bill city from 1884 to 1911; special charter city from 1856 to 1884); SAN MATEO, San Mateo, 19,403 (Cal. Stats. 1923, p. 1275; Sixth Class Municipal Corporation Bill city from 1894 to 1923); SAN RAFAEL, Marin, 8,573 (Cal. Stats. 1913, p. 1549; Sixth Class Municipal Corporation Bill city from 1889 to 1913; special charter city from 1874 to 1889); SANTA BARBARA, Santa Barbara, 34,958 (Cal. Stats. 1927, p. 2061; second freeholders charter Cal. Stats. 1917, p. 1824; first freeholders charter Cal. Stats. 1899, p. 448; special charter city from 1850 to 1899); SANTA CLARA, Santa Clara, 6,650 (Cal. Stats. 1927, p. 2259; special charter city from 1852 to 1927); SANTA CRUZ, Santa Cruz, 16,896 (Cal. Stats. 1911, p. 1861; former freeholders charter, Cal. Stats. 1907, p. 1105; special charter city from 1866 to 1907); SANTA MONICA, Los Angeles, 53,500 (Cal. Stats. 1907, p. 1007; Fifth Class Municipal Corporation Bill city from 1902 to 1907; Sixth Class Municipal Corporation Bill city from 1886 to 1902); SANTA ROSA, Sonoma, 12,605 (Cal. Stats. 1923, p. 1298; second freeholders charter Cal. Stats. 1905, p. 867; first freeholders charter Cal. Stats. 1903, p. 702; special charter city from 1868 to 1903); STOCKTON, San Joaquin, 54,714 (Cal. Stats. 1923, p. 1321; second freeholders charter Cal. Stats. Ex. Sess. 1911, p. 254; first freeholders charter Cal. Stats. 1889, p. 577; Fourth Class Municipal Corporation Bill city from 1884 to 1889; special charter city from 1852 to 1884); TULARE, Tulare, 8,259 (Cal. Stats. 1923, p. 1508; Fifth Class Municipal Corporation Bill city from 1888 to 1923); VALLEJO, Solano, 20,072 (Cal. Stats. 1911, p. 1958; first freeholders charter Cal. Stats. 1899, p. 370; special charter city from 1866 to 1899); VISALIA, Tulare, 8,904 (Cal. Stats. 1923, p. 1467; Fifth Class Municipal Corporation Bill city from 1900 to 1923; special charter city from 1874 to 1900); WATSONVILLE, Santa Cruz, 8,937 (Cal. Stats. 1903, p. 647; Sixth Class Municipal Corporation Bill city from 1889 to 1903; special charter city from 1868 to 1889).

Amendments to the foregoing charters were numerous, but are not shown above. The citations thereto are collected in the California General Laws where each city, its charter and the amendments, are found in alphabetical order by name of each city, except for some unknown reason the Marysville charter is not referred to in the General Laws.

APPENDIX B.

CITIES INCORPORATED UNDER THE MUNICIPAL CORPORATION BILL AS CITIES OF THE SIXTH CLASS AS OF SEPTEMBER, 1941

(County, date of incorporation, 1940 population and previous status, if any, also indicated).

ALTURAS, Modoc (1901) 2,090; AMADOR, Amador (1915) 249; ANAHEIM, Orange (1888) 11,031 (special charter city from 1870 to 1888); ANGELS, Calaveras (1912) 1,163; ANTOCH, Contra Costa (1890) 5,106 (incorporated under Towns Act of 1856 from 1872 to 1890); ARCADIA, Los Angeles (1903) 9,122; ARCATA, Humboldt (1903) 1,855 (special charter city from 1858 to 1903, known as Town of Union from 1858 to 1860); ARROYO GRANDE, San Luis Obispo (1911) 1,090; ATHERTON, San Mateo (1923) 1,908; ATWATER, Merced (1922) 1,235; AUBURN, Placer (1888) 4,013 (special charter city from 1860 to 1868—apparently no municipal organization from 1868 to 1888); AVALON, Los Angeles (1913) 1,637; AZUSA, Los Angeles (1898) 5,209; BANNING, Riverside (1913) 3,874; BEAUMONT, Riverside (1912) 2,208; BELL, Los Angeles (1927) 11,264; BELMONT, San Mateo (1926) 1,229; BELVEDERE, Marin (1896) 457; BENICIA, Solano (1886) 2,419 (special charter city from 1850 to 1886); BEVERLY HILLS, Los Angeles (1914) 26,823; BIGGS, Butte (1903) 547; BISHOP, Inyo (1903) 1,490; BLUE LAKE, Humboldt (1910) 503; BLYTHE, Riverside (1916) 2,355; BRAWLEY, Imperial (1903) 11,718; BREA, Orange (1917) 2,567; BURLINGAME, San Mateo (1908) 15,940; CALEXICO, Imperial (1908) 5,415; CALIPATRIA, Imperial (1919) 1,799; CALI-

STOGA, Napa (1886) 1,124; CARMEL BY THE SEA, Monterey (1916) 2,837; CERES, Stanislaus (1918) 1,332; CHINO, San Bernardino (1910) 4,204; CHOWCHILLA, Madera (1923) 1,957; CHULA VISTA, San Diego (1911) 5,138; CLAREMONT, Los Angeles (1907) 3,057; CLOVERDALE, Sonoma (1888) 809 (special charter city from 1872 to 1888); CLOVIS, Fresno (1912) 1,626; COLALINGA, Fresno (1906) 5,026; COLFAX, Placer (1910) 794; COLTON, San Bernardino (1887) 9,686; COLUSA, Colusa (1908) 2,285 (special charter city from 1876 to 1908); CONCORD, Contra Costa (1905) 1,373; CORCORAN, Kings (1914) 2,092; CORNING, Tehama (1906, 1907) 1,472; CORONA, Riverside (1896) 8,764; CORONADO, San Diego (1890) 6,932 CORTE MADERA, Marin (1916) 1,098; COVINA, Los Angeles (1901) 3,049; CRESCENT CITY, Del Norte (1885) 1,363 (special charter city from 1854 to 1885); CULVER CITY, Los Angeles (1917) 8,976; DALY CITY, San Mateo (1911) 9,625; DAVIS, Yolo (1917) 1,672; DELANO, Kern (1910, 1915) 4,573; DINUBA, Tulare (1905) 3,790; DIXON, Solano (1884) 1,108 (special charter city from 1878 to 1884); DORRIS, Siskiyou (1908) 863; DOS PALOS, Merced (1935) 978; DUNSMUIR, Siskiyou (1909) 2,359; EL CAJON, San Diego (1912) 1,471; EL CENTRO, Imperial (1908) 10,017; EL CERRITO, Contra Costa (1917) 6,137; EL MONTE, Los Angeles (1912) 4,746; EL PASO DE ROBLES, San Luis Obispo (1889) 3,045; EL SEGUNDO, Los Angeles (1917) 3,738; ELSINORE, Riverside (1888) 1,552; EMERYVILLE, Alameda (1896) 2,521; ESCONDIDO, San Diego (1888) 4,560; ETNA, Siskiyou (1904) 456 (special charter city from 1878 to 1904); EXETER, Tulare (1911) 3,883; FAIRFAX, Marin (1931) 2,198; FAIRFIELD, Solano (1903) 1,312; FERNDALE, Humboldt (1893) 901; FILLMORE, Ventura (1914) 3,252; FIREBAUGH, Fresno (1914) 704; FORT BRAGG, Mendocino (1889) 3,235; FORT JONES, Siskiyou (1904) 360 (special charter city from 1872 to 1904); FORTUNA, Humboldt (1906) 1,413; FOWLER, Fresno (1908) 1,531; FULLERTON, Orange (1904) 10,442; GARDENA, Los Angeles (1930) 5,909; GLENDORA, Los Angeles (1911) 2,822; GRIDLEY, Butte (1905) 2,338; GUSTINE, Merced (1915) 1,355; HANFORD, Kings (1891) 8,234; HAWTHORNE, Los Angeles (1922) 8,263; HAYWARD, Alameda (1892) 6,736 (special charter city from 1876 to 1892); HEALDSBURG, Sonoma (1883, 1884) 2,507 (special charter city from 1868 to 1883); HEMET, Riverside (1910) 2,595; HERCULES, Contra Costa (1900) 343; HERMOSA BEACH, Los Angeles (1900) 7,197; HILLSBOROUGH, San Mateo (1910) 2,747; HOLLISTER, San Benito (1901) 3,881 (special charter city from 1874 to 1901); HOLTVILLE, Imperial (1908) 1,772; HUNTINGTON PARK, Los Angeles (1906) 28,648; IMPERIAL, Imperial (1904) 1,493; INDO, Riverside (1920) 2,296; ISLETON, Sacramento (1923) 1,837; JACKSON, Amador (1905) 2,024; KING CITY, Monterey (1911) 1,768; KINGSBURG, Fresno (1908) 1,504; LAGUNA BEACH, Orange (1927) 4,460; LA HABRA, Orange (1925) 2,499; LAKEPORT, Lake (1888) 1,490; LA MESA, San Diego (1912) 3,925; LARKSPUR, Marin (1901) 1,558; LA VERNE, Los Angeles (1906) 3,092; LAWDALE, San Mateo (1924) 354; LEMOORE, Kings (1900) 1,711; LINCOLN, Placer (1890) 2,044; LINDSAY, Tulare (1910) 4,397; LIVERMORE, Alameda (1900) 2,885 (special charter city from 1876 to 1900); LIVINGSTON, Merced (1922) 895; LODI, San Joaquin (1906) 11,079; LOMPOC, Santa Barbara (1888) 3,379; LOS BANOS, Merced (1907) 2,214; LOS GATOS, Santa Clara (1887) 3,597; LOYALTON, Sierra (1901) 925; LYNNWOOD, Los Angeles (1921) 10,982; MADERA, Madera (1907) 6,457; MANHATTAN BEACH, Los Angeles (1912) 6,398; MANTECA, San Joaquin (1918) 1,981; MARICOPA, Kern (1911) 670; MARTINEZ, Contra Costa (1884) 7,381 (special charter city from 1876 to 1884); MAYWOOD, Los Angeles (1924) 10,731; MEMLO PARK, San Mateo (1927) 3,258 (special charter city from 1874 to 1876); MERCED, Merced (1889) 10,135; MILL VALLEY, Marin (1900) 4,847; MONROVIA, Los Angeles (1887) 12,807; MONTAGUE, Siskiyou (1909) 463; MONTEBELLO, Los Angeles (1920) 8,016; MONTEREY PARK, Los Angeles (1916) 8,531; MORGAN HILL, Santa Clara (1906) 1,014; MOUNTAIN VIEW, Santa Clara (1902) 3,946; MT. SHASTA, Siskiyou (1905) 1,618; NATIONAL CITY, San Diego (1887) 10,344; NEEDLES, San Bernardino (1913) 3,624; NEVADA CITY, Nevada (1926) 2,445 (special charter city from 1851 to 1852, 1856 to 1926); NEWMAN, Stanislaus (1908) 1,214; NEWPORT BEACH, Orange (1906) 4,438; NORTH SACRAMENTO, Sacramento (1924) 3,053; OAKDALE, Stanislaus (1906) 2,592; OCEANSIDE, San Diego (1888) 4,651; OJAL, Ventura (1921) 1,622; ONTARIO, San Bernardino (1891) 14,197; ORANGE, Orange (1888) 7,901; ORLAND, Glenn (1909) 1,366; OXNARD, Ventura (1903) 8,519; PALM SPRINGS, Riverside (1938) 3,434; PALOS VERDES ESTATES, Los Angeles (1939) 987; PARLIER, Fresno (1921) 776; PATTERSON, Stanislaus (1919) 1,109; PERRIS, Riverside (1911) 1,011; PINOLE, Contra Costa (1903) 934; PITTSBURG, Contra Costa (1903) 9,520 (known as Black Diamond from 1903 to 1911); PLACENTIA, Orange (1926) 1,472; PLACERVILLE, El Dorado (1903) 3,064 (special charter city from 1854 to 1903); PLEASANTON, Alameda (1894) 1,278; PLYMOUTH, Amador (1917) 460; POINT ARENA, Mendocino (1908) 374; RED BLUFF, Tehama (1895) 3,824 (special charter city from 1876 to 1895); REDDING, Shasta (1887) 8,109; REDLANDS, San Bernardino (1888) 14,324; REEDLEY, Fresno (1913) 3,170; RIALTO, San Bernardino (1911) 1,770; RIO VISTA, Solano (1894) 1,666; RIVERBANK, Stanislaus (1922) 1,130; ROCKLIN, Placer (1893) 795; ROSS, Marin (1908) 1,751; ST. HELENA, Napa (1887) 1,758; SAN ANSELMO, Marin (1907) 5,790; SAN BRUNO, San Mateo (1914) 6,519; SAN CARLOS, San Mateo (1925) 3,520; SAN CLEMENTE, Orange (1928) 479; SAN FERNANDO, Los Angeles (1911) 9,094; SAN GABRIEL, Los Angeles (1913) 11,867; SANGER, Fresno (1911) 4,017; SAN JACINTO, Riverside (1888) 1,356; SAN JOAQUIN, Fresno (1920) (listed in California Blue Book as actively functioning municipal corporation but not listed in 1940 U. S. Census); SAN JUAN, San Benito (1896) 678; SAN MARINO, Los Angeles (1913) 8,175; SANTA MARIA, Santa Barbara (1905) 8,522; SANTA PAULA, Ventura (1902) 8,986; SAUSALITO, Marin (1893) 3,540; SEAL BEACH, Orange (1915) 1,553; SERASTOPOL, Sonoma (1902) 1,856; SELMA, Fresno (1893) 3,667; SHAFTER, Kern (1938) 1,258; SIERRA MADRE, Los Angeles (1907) 4,581; SIGNAL HILL, Los Angeles (1924) 3,184; SOLEDAD, Monterey (1921) 861; SONOMA, Sonoma (1900) 1,158; SONORA, Tuolumne (1900) 2,257 (special charter city from 1851 to 1900); SOUTH

GATE, Los Angeles (1923) 26,945; SOUTH PASADENA, Los Angeles (1888) 14,356; SOUTH SAN FRANCISCO, San Mateo (1908) 6,629; SUISUN CITY, Solano (1884) 706; SUNNYVALE, Santa Clara (1912) 4,373; SUSANVILLE, Lassen (1900) 1,575; SUTTER CREEK, Amador (1913) 1,134 (special charter city from 1874 to 1876); TAFT, Kern (1910) 3,205; TEHACHAPI, Kern (1909) 1,264; TEHAMA, Tehama (1906) 175; TORRANCE, Los Angeles (1921) 9,950; TRACY, San Joaquin (1910) 4,056; TULELAKE, Siskiyou (1937) 785; TURLOCK, Stanislaus (1908) 4,839; TUSTIN, Orange (1927) 953; UKIAH, Mendocino (1885) 3,731 (special charter city from 1876 to 1885); UPLAND, San Bernardino (1906) 6,316; VACAVILLE, Solano (1892) 1,614; VERNON, Los Angeles (1905) 850; WALNUT CREEK, Contra Costa (1914) 1,578; WEST COVINA, Los Angeles (1923) 1,072; WESTMORLAND, Imperial (1932) 1,010; WHEATLAND, Yuba (1891) 496 (special charter city from 1874 to 1891); WHITTIER, Los Angeles (1898) 16,115; WILLIAMS, Colusa (1920) 814; WILLITS, Mendocino (1888) 1,625; WILLOWS, Glenn (1886) 2,215; WINTERS, Yolo (1898) 1,133; WOODLAKE, Tulare (1939) 1,146; YREKA, Siskiyou (1888) 2,485; YUBA CITY, Sutter (1908) 4,968 (special charter city from 1878 to 1908).

Kennett, Shasta County, was incorporated as a Sixth Class city in 1911 but does not appear to have an actively functioning municipal government, and is not listed in the 1940 census.

The following cities were incorporated and functioning under the Municipal Corporation Bill for the period indicated but were subsequently on the date last named in each case, respectively, disincorporated (Bayshore, San Mateo, 1932 to 1940; Boulder Creek, Santa Cruz, 1902-1915; Coram, Shasta, 1910-1918; Kelseyville, Lake, 1888-1902; McKittrick, Kern, 1913-1926; Orangethorpe, Orange, 1921-1923; Pismo Beach, San Luis Obispo, 1939-1940; Potter Valley, Mendocino, 1890-1926; Stanton, Orange, 1911-1924) or their incorporation proceedings were held invalid by the courts (Linden, San Joaquin, 1893-1894; Plainsburg, Merced, 1892-1893; and Wasco, Kern, 1924-1935) or were consolidated with other cities (Barnes City, Los Angeles, 1926-1927, consolidated with Los Angeles; Belmont Heights, Los Angeles, 1908-1909, consolidated with Long Beach; Eagle Rock, Los Angeles, 1911-1923, consolidated with Los Angeles; East San Diego, San Diego, 1912-1923, consolidated with San Diego; East San Jose, Santa Clara, 1906-1911, consolidated with San Jose; Hollywood, Los Angeles, 1903-1910, consolidated with Los Angeles; Hyde Park, Los Angeles, 1921-1923, consolidated with Los Angeles; Kern, Kern, 1893-1910, consolidated with Bakersfield; Mayfield, Santa Clara, 1903-1925, consolidated with Palo Alto; Ocean Park, 1904-1925, known as Venice 1911-1925, consolidated with Los Angeles; San Pedro, Los Angeles, 1888-1909, consolidated with Los Angeles; Sawtelle, Los Angeles, 1906-1922, consolidated with Los Angeles; Tropico, Los Angeles, 1911-1918, consolidated with Glendale; Tujunga, Los Angeles, 1925-1932, consolidated with Los Angeles; Watts, Los Angeles, 1907-1926, consolidated with Los Angeles; Willow Glen, Santa Clara, 1927-1936, consolidated with San Jose; Wilmington, Los Angeles, a special charter city 1872-1905, a Municipal Corporation Bill city 1905-1909, consolidated with Los Angeles).

Many of the cities now having freeholders charters were at one time operating under the Municipal Corporation Bill. See Appendix A.

In addition to the cities incorporated under the Municipal Corporation Bill it is possible that there may exist incorporated towns which were incorporated by order of their county board of supervisors under the provisions of the Towns Act of 1856 (Cal. Stats. 1856, p. 198) heretofore discussed, and which has never been repealed. This matter has not been deemed of sufficient importance to make inquiry of all the boards of supervisors of the various counties of the state as there are no cities listed on the 1940 census as incorporated which do not fall within the category of one of the classes of incorporated cities previously discussed. Nor does any such city appear in the latest CALIFORNIA BLUE BOOK (1938) 424-485. It would seem fairly certain, therefore, that there is no such town now actively functioning as a municipal corporation. But technically if any such towns exist—and this writer knows of none (for towns that may possibly be incorporated under this law, see *supra* note 58), they are municipal corporations. It may still seem to be possible for towns to be incorporated under the Towns Act of 1856 and therefore that law could conceivably be used for this purpose in the future, although it is very improbable that it will be.

APPENDIX C.

CHARTERS GRANTED TO CITIES OR TOWNS BY SPECIAL LEGISLATIVE ACT BETWEEN 1849 AND 1879 (AMENDMENTS NOT INDICATED)

ALAMEDA, Alameda, three charters, in 1854 (Cal. Stats. 1854, p. 209), 1872 (*ibid.* 1871-2, p. 276) and 1878 (*ibid.* 1877-8, p. 89); ALVISO, Santa Clara, one charter (*ibid.* 1852, p. 222); ANAHEIM, Orange, two charters, in 1870 (*ibid.* 1869-70, p. 66, repealed *ibid.* 1871-2, p. 273) and 1878 (*ibid.* 1877-8, p. 309); AUBURN, Placer, one charter (*ibid.* 1860, p. 135, repealed *ibid.* 1867-8, p. 555); BENICIA, Solano, three charters, in 1850 (*ibid.* 1850, p. 119), 1851 (*ibid.* 1851, p. 348), and 1859 (*ibid.* 1859, p. 314); BERKELEY, Alameda, one charter (*ibid.* 1877-8, p. 888); BROOKLYN, Alameda (now part of Oakland), one charter (*ibid.* 1869-70, p. 680); CHICO, Butte, one charter (*ibid.* 1871-2, p. 11); CLOVERDALE, Sonoma, one charter (*ibid.* 1871-2, p. 164); COLOMA, El Dorado, one charter (*ibid.* 1858, p. 207, repealed *ibid.* 1909, p. 1001); COLUMBIA, Tuolumne, one charter (*ibid.* 1857, p. 188, repealed *ibid.* 1869-70, p. 430); COLUSA, Colusa, two charters, in 1870 (*ibid.* 1869-70, p. 809) and 1876 (*ibid.* 1875-6, p. 669); CRESCENT CITY, Del Norte, one charter (*ibid.* 1854, p. 197); DIXON, Solano, one charter (*ibid.* 1877-8, p. 712); DOWNIEVILLE, Sierra, two charters, in 1863 (*ibid.* 1863, p. 74) and 1866 (*ibid.*

1855-6, p. 642, repealed *ibid.* 1901, p. 276); DUTCH FLAT, Placer, one charter, in 1863 (*ibid.* 1863, p. 255, repealed *ibid.* 1865-6, p. 10); EL DORADO, El Dorado, one charter (*ibid.* 1855, p. 116, repealed *ibid.* 1857, p. 7); ETNA, Siskiyou, one charter (*ibid.* 1877-8, p. 261); EUREKA, Humboldt, three charters, in 1856 (*ibid.* 1856, p. 103), 1859 (*ibid.* 1859, p. 192) and 1874 (*ibid.* 1873-4, p. 91); FELTON, Santa Cruz, one charter (*ibid.* 1877-8, p. 185, repealed *ibid.* 1917, p. 151); FORT JONES, Siskiyou, one charter (*ibid.* 1871-2, p. 387); GILROY, Santa Clara, one charter (*ibid.* 1869-70, p. 263); GRASS VALLEY, Nevada, three charters, in 1861 (*ibid.* 1861, p. 153), 1864 (*ibid.* 1863-4, p. 57) and 1866 (*ibid.* 1865-6, p. 363); HAYWARD, Alameda, one charter (*ibid.* 1875-6, p. 215); HEALDSBURG, Sonoma, two charters, in 1868 (*ibid.* 1867-8, p. 170) and 1874 (*ibid.* 1873-4, p. 665); HOLLISTER, San Benito, one charter (*ibid.* 1873-4, p. 675); HORNITOS, Mariposa, two charters, in 1861 (*ibid.* 1861, p. 118, repealed *ibid.* 1867-8, p. 195) and 1870 (*ibid.* 1869-70, p. 471); LIVERMORE, Alameda, one charter (*ibid.* 1875-6, p. 913); LOS ANGELES, Los Angeles, one charter (*ibid.* 1850, p. 155, drastically revised by *ibid.* 1875-6, p. 692); MARKLEEVILLE, Alpine, one charter (*ibid.* 1863-4, p. 441); MARTINEZ, Contra Costa, one charter (*ibid.* 1875-6, p. 822); MARYSVILLE, Yuba, four charters, in 1851 (*ibid.* 1851, p. 330), 1855 (*ibid.* 1855, p. 23), 1857 (*ibid.* 1857, p. 40) and 1876 (*ibid.* 1875-6, p. 149); MEADOW LAKE, Nevada, one charter (*ibid.* 1865-6, p. 372); MENLO PARK, San Mateo, one charter (*ibid.* 1873-4, p. 533, repealed *ibid.* 1875-6, p. 400); MONTEREY, Monterey, three charters, in 1850 (*ibid.* 1850, p. 131), 1851 (*ibid.* 1851, p. 367) and 1853 (*ibid.* 1853, p. 159, repealed *ibid.* 1889, p. 227); NEVADA CITY, Nevada, three charters, in 1851 (*ibid.* 1851, p. 339, repealed *ibid.* 1852, p. 188), 1856 (*ibid.* 1856, p. 216) and 1878 (*ibid.* 1877-8, p. 221); OAKLAND, Alameda, three charters, in 1852 (*ibid.* 1852, p. 180), 1854 (*ibid.* 1854, p. 183) and 1862 (*ibid.* 1862, p. 337); OROVILLE, Butte, one charter (*ibid.* 1857, p. 77, repealed *ibid.* 1859, p. 32); PETALUMA, Sonoma, two charters, in 1858 (*ibid.* 1858, p. 140) and 1868 (*ibid.* 1867-8, p. 383); PLACERVILLE, El Dorado, three charters, in 1854 (*ibid.* 1854, p. 140), 1859 (*ibid.* 1859, p. 77) and 1863 (*ibid.* 1863, p. 211); RED BLUFF, Tehama, one charter (*ibid.* 1875-6, p. 637); REDWOOD CITY, San Mateo, one charter (*ibid.* 1867-8, p. 411); SACRAMENTO, Sacramento, four charters, in 1850 (*ibid.* 1850, p. 70), 1851 (*ibid.* 1851, p. 391), 1858 (*ibid.* 1858, p. 267, creating City and County of Sacramento) and 1863 (*ibid.* 1863, p. 415, superseding City and County by City of Sacramento); ST. HELENA, Napa, one charter (*ibid.* 1875-6, p. 444); SALINAS CITY, Monterey, two charters, in 1874 (*ibid.* 1873-4, p. 242) and 1876 (*ibid.* 1875-6, p. 94); SAN BERNARDINO, San Bernardino, one charter (*ibid.* 1854, p. 200, repealed *ibid.* 1861, p. 508, *ibid.* 1863, p. 36); SAN BUENAVENTURA, Ventura, three charters, in 1866 (*ibid.* 1865-6, p. 216), 1874 (*ibid.* 1873-4, p. 54) and 1876 (*ibid.* 1875-6, p. 534); SAN DIEGO, San Diego, three charters, in 1850 (*ibid.* 1850, p. 121, repealed *ibid.* 1852, p. 223), 1872 (*ibid.* 1871-2, p. 285) and 1876 (*ibid.* 1875-6, p. 806); SAN FRANCISCO, four charters, three for the City of San Francisco, in 1850 (*ibid.* 1850, p. 223), 1851 (*ibid.* 1851, p. 357) and 1855 (*ibid.* 1855, pp. 251, 284) and one for the City and County of San Francisco, commonly known as the Consolidation Act or the Hawes Act in 1856 (*ibid.* 1856, p. 145); SAN JOSE, Santa Clara, five charters, in 1850 (*ibid.* 1850, p. 124), 1857 (*ibid.* 1857, p. 113), 1859 (*ibid.* 1859, p. 109), 1866 (*ibid.* 1865-6, p. 246), 1872 (*ibid.* 1871-2, p. 333) and 1874 (*ibid.* 1873-4, p. 395); SAN JUAN, San Benito, one charter (*ibid.* 1869-70, p. 245); SAN LEANDRO, Alameda (*ibid.* 1871-2, p. 458, amended *ibid.* 1873-4, p. 63); SAN LUIS OBISPO, San Luis Obispo, four charters, 1856 (*ibid.* 1856, p. 30, repealed *ibid.* 1858, p. 315), 1863 (*ibid.* 1863, p. 293), 1872 (*ibid.* 1871-2, p. 220) and 1876 (*ibid.* 1875-6, p. 361); SANTA BARBARA, Santa Barbara, five charters, 1850 (*ibid.* 1850, p. 172), 1860 (*ibid.* 1860, pp. 197, 250), 1861 (*ibid.* 1861, p. 502), 1864 (*ibid.* 1863-4, p. 68) and 1874 (*ibid.* 1873-4, p. 330); SANTA CLARA, Santa Clara, two charters, in 1866 (*ibid.* 1865-6, p. 493) and 1872 (*ibid.* 1871-2, p. 251); SANTA CRUZ, Santa Cruz, two charters, in 1866 (*ibid.* 1865-6, p. 547) and 1876 (*ibid.* 1875-6, p. 189); SANTA ROSA, Sonoma, two charters, in 1868 (*ibid.* 1867-8, p. 170) and 1872 (*ibid.* 1871-2, p. 628); SONOMA, Sonoma, one charter (*ibid.* 1850, p. 150, repealed *ibid.* 1862, p. 460); SONORA, Tuolumne, four charters, in 1851 (*ibid.* 1851, p. 375), 1855 (*ibid.* 1855, p. 35), 1862 (*ibid.* 1862, p. 228) and 1878 (*ibid.* 1877-8, pp. 23, 467); STOCKTON, San Joaquin, five charters, 1852 (*ibid.* 1852, p. 211), 1857 (*ibid.* 1857, pp. 133, 197), 1862 (*ibid.* 1862, p. 314), 1870 (*ibid.* 1869-70, pp. 24, 587) and 1872 (*ibid.* 1871-2, p. 595); SUTTER CREEK, Amador, one charter (*ibid.* 1873-4, p. 887, repealed *ibid.* 1875-6, p. 40); UKIAH, Mendocino, one charter (*ibid.* 1875-6, p. 162); UNION, Humboldt, one charter (*ibid.* 1858, p. 7); VALLEJO, Solano, three charters, in 1866 (*ibid.* 1865-6, p. 431), 1868 (*ibid.* 1867-8, p. 618) and 1872 (*ibid.* 1871-2, pp. 566, 757); VISALIA, Tulare, one charter (*ibid.* 1873-4, p. 171); WATSONVILLE, Santa Cruz, one charter (*ibid.* 1867-8, p. 688); WHEATLAND, Yuba, one charter (*ibid.* 1873-4, p. 351); WILMINGTON, Los Angeles, one charter (*ibid.* 1871-2, pp. 108, 446, repealed *ibid.* 1887, p. 108); WOODLAND, Yolo, one charter (*ibid.* 1873-4, p. 557); YREKA, Siskiyou, one charter (*ibid.* 1857, p. 229); YUBA CITY, Sutter, one charter (*ibid.* 1877-8, p. 783).

Nearly all of the above charters were amended on numerous occasions—those of the larger cities being amended at nearly every session of the legislature. See STATUTORY RECORD, SUPPLEMENT TO INDEX TO LAWS OF CALIFORNIA (1932) 1-302.