if plaintiff sold buyer a truck made in 1934 which was recorded with the commissioner? The sale was a conditional one. Next year the commissioner would be able to throw the record out. In two years if the debt had not been paid what would the rights of the holder of a chattel mortgage be? Plaintiff would claim he gave notice to the commissioner and the defendant, the holder of a chattel mortgage would claim he looked for any lien and could find none. The commissioner would be authorized to destroy records after the vehicle is eight years old. All that is required of the plaintiff is that he file with the commissioner. He filed. Is the holder of the chattel mortgage who looked for any incumbrances and found none to be disposed in such manner? It is not unlikely that trucks would be purchased after eight years. How is the conditional seller to file his sale? What is the duration of valid notice in such a case?

Constitutional Law—Delegation of Legislative Power—Taxation

On writ of certiorari, prosecutor brought up for review the validity of an order made by the Commissioner of Education directing the prosecutor, the Board of Education of the Town of Montclair, to comply with the provisions of N. J. S. A. 18:5-68 to 18:5-82, and to furnish the defendant with the names and salaries of all permanent employees coming into its employ subsequent to March 25, 1935, to pay to the defendant three (3) percentum of the total amount of the salaries paid to such employees, and to contribute an amount equal to four (4) per cent of such total salaries from March 25, 1935, to said defendant. *Held,* prosecutor's contention that this is special legislation, that it is a delegation of legislative power, that it is a delegation of the taxing power, and that it sets up machinery whereby one taxing district shall be taxed for the benefit of another were without merit; writ dismissed. *Board of Education of Montclair v. Board of Education Employees' Pension Fund of Essex County,* 125 N.J.L. 164, 14 Atl. 2d 783 (S. Ct. 1940).*

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* Aff'd on mem., 125 N.J.L. —, 17 A. 2 780 (E. & A. 1841).

The essential provisions of this act[1] are as follows: (1) All employees of Boards of Education of counties of the first class not eligible to participate in any other pension fund *may* associate themselves as a corporation for obtaining a pension fund for their retirement, (2) The county superintendent shall call a meeting of those employees and *if two-thirds of those present at such meeting adopt a resolution to form a corporation, it shall be formed,* (3) The corpus of the fund shall be derived as follows: (a) Three per cent (3%) of the salary of those members entering before the age of thirty-five (35); (b) Such percentage of the salary of those entering after the age of thirty-five (35) as shall be determined by the Board of Trustees; (c) Gifts; (d) Contributions from each Board of Education amounting to four per cent (4%) of the annual salaries of the employees who are members to be appropriated and paid for as all other items for the support of public schools; (e) Deficiencies are to be met by the payment by the respective Boards of proportionate sums sufficient to meet the requirements of the fund for the time being, (4) The original act was amended in 1935 to make it mandatory upon such employees as are employed thereafter to become members.

That such legislation is discriminatory and is special legislation specifically prohibited by Article IV, Sec. 7, paragraph 11, of the Constitution of the State of New Jersey seems clearly apparent.

The Federal Constitution[2] guarantees equal rights to all and requires equal protection and security to all under like circumstances in the enjoyment of their personal and civil rights.[3] This equality required by the Constitution is the equality of right and not of enjoyment, and a law that confers equal rights on all citizens of a state, or subjects them to equal burdens is an equal law.[4]

The Constitution of the State of New Jersey[5] provides that the legis-

1. Chapt. 112 of Laws of 1929; Chapt. 118 of Laws of 1935; N.J.S.A. 18:5-68 to 18:5-82.

2. U. S. Const., XIV Amend., sec. 1.

3. *In re* Van Horne, 74 N.J.Eq. 600, 70 Atl. 986 (Ch. 1908); Sawyer v. Gilmore, 109 Maine 169, 83 Atl. 673 (1912).

4. *In re* Opinion of the Justices, 81 N.H. 566, 129 Atl. 117, 39 A.L.R. 1023 (1925).

5 Art. IV, Sec. 7, Par. 11. In Wanser v. Hoos, 60 N.J.L. 482, 38 Atl. 449, 450, 64 Am St. Rep. 600 (E. & A. 1897) Mr. Justice Depue, speaking of this

lature shall not pass private, local, or special acts in any of the cases therein enumerated, which include "regulating the internal affairs of towns and counties; . . . providing for the management and support of free public schools;" also that "the legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which in its judgment may be provided for by general laws."

It has been held that the word "towns" as used in this provision includes all kinds of municipal corporations formed by local government other than counties,[6] and school districts are formed for the purpose of aiding in the exercise of a governmental function, and that the legal voters of each school district are entrusted with specific powers of local government.[7] A school district is a part of the machinery of government, as much so to all intents and purposes as a town or township,[8] and the fact towns and townships are classified as municipal corpora-

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amendment, said: "It grew out of the public appreciation of the evils that spring from local and special legislation in relation to municipal affairs. The people, in adopting this constitutional amendment, intended to eradicate the source of these evils. In language too plain and explicit to be misapprehended, it prohibited the legislation from passing any local or special laws on that subject, and restricted such legislation to general laws. . . *The test of the generality of a law adopted is that it shall embrace all and exclude none whose conditions and wants render such legislation equally appropriate to them as a class. It is also well settled by the decisions of our courts that, although population may be made the basis of classification in statutes relating to municipal bodies, such a classification cannot be made the means of evading the constitutional interdict of local or special laws. The question whether any particular statute is local or special must be determined, not upon its compliance with a legislative classification, but upon whether, having regard to the character of the legislation and the limitation upon it contained in the act, the statute is or is not a general law, as defined by the courts.*" (Italics added); reaffirmed in Kirsch v. Dias, 123 N.J.L. 97, 8 Atl. 2d 124 (S. C. 1939). See also Hammer v. State, 44 N.J.L. 667, 669, 670 (E. & A. 1882).

6. In Stout v. Glen Ridge, 59 N.J.L. 201, 203, 35 Atl. 913 (E. & A. 1896), the court said: "In the clause of our amended constitution which prohibits legislation regulating the internal affairs of towns and counties, its meaning has been settled to be broad enough to include all kinds of municipal corporations formed for local governments other than counties," citing Van Riper v. Parsons, 40 N.J.L. 1 (E. & A. 1878); Pell v. Newark, 40 N.J.L. 550 (E. & A. 1878).

7. Landis v. School District No. 44, 57 N.J.L. 509, 31 Atl. 1017 (S. C. 1895).

8. Commissioners, etc. of Trenton v. Fell, 52 N.J.Eq. 689, 29 Atl. 618 (Ch. 1894).

tions goes very far towards including school districts.[9]

The constitutional prescription relates to the regulation of the internal affairs of towns and counties without regard to population, and it applies to the lesser as to the greater municipalities.[10]

It is well settled that a law, to be general, "shall embrace all and exclude none whose conditions and wants render such legislation equally appropriate to them as a class."[11]

Classification and differentiation must be reasonable and based on substantial distinctions bearing reasonable relation to the object of the statute.[12]

Population may furnish a valid basis for classification[13] but the classification must be based upon distinctions that are substantial and not merely illusory, and if the basis is logical and reasonable, free from artificiality and arbitrariness, and includes all and omits none naturally falling into that category, when viewed in the light of legislative design, it is not within the constitutional interdict.[14] There must be such a

9. See note 8. Board of Education v. Tait, 80 N.J Eq. 94, 83 Atl. 459, *aff'd*, 81 N J Eq. 161, 86 Atl. 379 (E. & A. 1913); Van Riper v. Parsons, *supra*, note 6. Pell v. Newark, *supra*, note 6.

10. *In re* Haynes, 54 N.J.L. 28, 22 Atl. 923 (S. C. 1891).

11. See note 6.

12. See note 5. Weimar Storage Co. v. Dill, 103 N.J.Eq 307, 143 Atl. 438 (Ch. 1928); Goldberg v. Dorland, 56 N.J.L. 354, 28 Atl. 599 (S. C. 1894).

13. In Hammer v. State, *supra*, note 5, the court said: "Population is a legitimate basis of classification in statutes relating to the structure, machinery and power of municipal government, but population alone cannot be made the basis of classification where it does not bear a reasonable relation to the necessities and properties of the various grades of municipal government" *Accord*, Lewis v. Jersey City, 166 N.J.L. 582, 50 Atl. 346 (E. & A. 1901); Rutgers v. New Brunswick, 42 N.J.L. 51 (S. Ct. 1880); Van Giesen v. Bloomfield, 47 N.J.L. 442, 2 Atl. 249 (S. C. 1885); Wood v. Atlantic City, 56 N.J.L. 232, 28 Atl 427 (S. C. 1893); Atlantic City Water-Works v. Consumers Water Co., 44 N.J.Eq. 427, 15 Atl. 581 (Ch. 1888); Wanser v. Hoos, *supra*, note 5; Dover Township v. Van Kirk, 123 N.J.L. 507, 9 Atl. 2d 796 (S. C. 1939).

14. Lewis v. Jersey City, *supra*, note 13; Van Riper v. Parsons, *supra*, note 6; Raymond v. Township Council of Teaneck, 118 N.J.L. 109, 191 Atl. 480 (E. & A. 1937); Burlington v. Penn R.R. Co., 104 N.J.L. 649, 142 Atl. 23 (E. & A. 1928); Att'y-Gen. v. McKelvey, 78 N.J.L. 621, 77 Atl. 94 (E. & A. 1910); Boorum v. Connelly, 66 N.J.L. 197, 48 Atl. 955, 88 Am. St. Rep. 469 (E. & A. 1901); Attorney General v. Anglesea, 58 N.J.L. 372, 33 Atl. 971 (E. & A. 1896); Mortland v. Christian, 52 N.J L. 521, 20 Atl 673 (E. & A. 1890); Wanser

rational basis of classification as to mark the objects so designated as peculiarly requiring exclusive legislation;[15] they must be distinguished by characteristics sufficiently marked and important to make them a class by themselves.[16]

Schools and school districts have received much attention by our legislature and our courts have consistently held that school districts are formed for the purpose of aiding in the exercise of a governmental function,[17] but are subject to the constitutional prohibition of special laws for their management and support.[18]

The classification of school districts has been made to depend upon the characteristics of the school districts rather than on its geographical location and the mere circumstance that one group of schools is located within a "city" and another group located within an "unincorporated town" does not change their characteristics so as to make a law applicable to the one group and inapplicable to the other.[19] This would be an

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v. Hoos, *supra,* note 5; Leeds v. Atlantic City, 81 N.J.L. 230, 80 Atl. 23 (S. C. 1911); Johnson v. Asbury Park, 58 N.J.L. 604, 33 Atl. 850 (S. C. 1896); Alexander v. City of Elizabeth, 56 N.J.L. 71, 28 Atl. 51, 23 L.R.A. 525 (S. C. 1894); Helfer v. Simon, 53 N.J.L. 550, 22 Atl. 120 (S. C. 1891); State v. Somers Point, 52 N.J.L. 32, 18 Atl. 694, 6 L.R.A. 57 (S. C. 1889).

15. Van Giesen v. Bloomfield, *supra,* note 13; Hammer v. State, *supra,* note 5; Rutgers v. New Brunswick, *supra,* note 13; Van Riper v. Parsons, *supra,* note 6; State v. Clayton, 53 N.J.L. 277, 21 Atl. 1026 (S. C. 1891); Dobbins v. North Hampton, 50 N.J.L. 496, 14 Atl. 587 (S. C. 1888); Trenton Iron Co. v. Yard, 42 N.J.L. 357 (S. Ct. 1880); Stahl v. Trenton, 54 N.J.L. 444, 24 Atl. 478 (S. C. 1892); Tyler v. Plainfield, 54 N.J.L. 526, 24 Atl. 493 (S. C. 1892).

16. Burlington v. Penn R.R. Co, *supra,* note 14.

17. Landis v. School District No. 44, *supra,* note 7.

18. Riccio v. Hoboken, 69 N.J.L. 649, 55 Atl. 1109, 63 L.R.A. 485 (E. & A. 1903).

19. Riccio v. Hoboken, *supra,* in which Mr. Justice Pitney, speaking for the court said: "We give to the constitutional prohibition of special laws respecting schools an independent force and effect, unqualified by the prohibition respecting municipal legislation. . . Assuming that the legislature might make the schools a matter of special concern to the several municipalities, either by establishing school districts coterminous with municipal districts, but having separate local governments, or even by delegating the management and support of the schools to the municipal governments themselves, we are unable to see how the constitutional prohibition of special laws for the management and support of the schools can thus be deprived of effect. *Differences in the mode of school management and support that are made to depend upon the mere circumstance that*

illusory and arbitrary classification and such a double limitation of a class as to make the purpose of the act to fit a special situation very apparent, causing it to fall within the censure upon such legislation.[20]

What characteristics do schools in Essex and Hudson Counties have that set them apart from schools in other counties, and require the passage of exclusive legislation for their benefit? Is a clerk or a janitor, employed in Newark or Montclair in a different class than a clerk or janitor with similar duties employed in Elizabeth, Asbury Park or Paterson? It is submitted they all form part of one group of employees of Boards of Education and that legislation applicable to the one is applicable to the other, regardless of the size or location of the county in which the school district is located.

Many acts have been declared invalid because they were passed for the benefit of an individual, a select group, or a crtain district, viz., an act to fix the salary of the Prosecutor of the Pleas of Passaic County;[21]

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one group of schools is located within a 'city' and another group located within an 'unincorporated town,' seem to us inconsistent with the constitution." (Italics added.) *Accord*: Lowthrop v. Trenton, 61 N.J.L. 484, 40 Atl. 442 (S. C. 1898), *aff'd*, 62 N.J.L. 795, 44 Atl. 755 (E. & A. 1899).

20. In Hammer v. State, *supra*, note 5, Chancellor Runyon clearly draws the line of demarcation with these words: "Normally, there can be, under our constitution, no such thing as local or special legislation to regulate the internal affairs of municipalities, but all legislation to that end must be general and applicable alike to all. Nor can any departure from the rule be justified, except where, by reason of the existence of a substantial difference between municipalities, a general law would be inappropriate to some, while it would be appropriate to and desirable for others. Then it would be warranted, not only by the necessities of the situation, but by a reasonable construction of the constitution. . . To justify separate legislation for towns or counties, there must be something in the subject matter of the enactment to call for and necessitate such legislation. . . If the legislature interferes at all . . . it must be by legislation not appropriate to other towns" *Accord*: *In re* Petition of Cleveland, Mayor, 52 N.J.L. 188, 19 Atl. 17, 7 L.R.A. 431 (E. & A. 1889); Helfer v Simon, *supra*, note 14; Westervelt v. Borough of Tenafly, 4 N.J.Misc 579, 133 Atl. 753 (E & A. 1926); Stahl v. Trenton, *supra*, note 15; Post v. State, 55 N.J.L. 264, 26 Atl. 683 (S. C. 1882); State v. Riordan, 75 N.J.L. 16, 69 Atl. 494 (S. C. 1903); Sawyer v. Kearney, 85 N.J.L. 625, 90 Atl 306 (E. & A. 1914); Wilson v. Ramsey, 86 N.J.L. 263, 90 Atl. 265 (E. & A. 1914); Kudlich v. Griffin, 88 N J.L. 573, 96 Atl. 561 (S.C. 1916); Erion v. Board of Pension Comm'rs. of Hoboken, 111 N J.L. 243, 165 Atl 103 (S. C. 1933).

21 Freeholders of Passaic County v Stevenson, 46 N J L. 173 (E & A 1884).

a statute establishing a five year term of office for municipal tax assessors in cities having a population of not less than 135,000 and not more than 200,000 and which have commissioners of assessment;[22] a statute which creates inequalities in the salaries of county prosecutors without regard to population, service rendered, or other general rule has been held not to be a general law;[23] an act permitting the governing body of every municipality to reduce the salary of any state officer whose salary was paid by the county or municipality;[24] an act authorizing any township committee in any township in any county of the second and third class to set up and divide the said township into districts and to alter same from time to time held invalid because its operation was confined to counties of the second and third class;[25] an act providing for the granting of plenary retail liquor consumption licenses by judges of the Court of Common Pleas in counties of the sixth class;[26] an act authorizing cities of the second class to extend the term

22. Raymond v. Township Council of Teaneck, *supra*, note 14.

23. Woodruff v. Freeholders of Passaic Co., 42 N.J.L. 533 (S. Ct. 1880). In Budd v. Hancock, 66 N.J.L. 133, 48 Atl. 1023 (S. C. 1901), Mr. Justice Garrison said: "A law is special in a constitutional sense when by force of inherent limitations it arbitrarily separates some persons, places or things from others upon which, but for such limitation, it would operate. The test of a special law is the appropriateness of its provisions to the objects that it excludes. *It is not, therefore, what a law includes, that makes it special, but what it excludes. If nothing be excluded that should be included the law is general.* Within this distinction between a special and a general law the question in every case is whether any appropriate object is excluded to which the law, but for its limitation would apply. If the only limitation contained in the law is a legitimate classification of its objects it is a general law. Hence, if the object of a law have characteristics so distant as reasonably to form, for the purpose legislated upon, a class by itself, the law is general, notwithstanding it operates upon a single object only; for a law is not general because it operates upon every person in the state, but because every person that can be brought within its predicament becomes subject to its operation. . . The decisive question, therefore, is whether the object of the present law is susceptible of association with other objects for the purpose of legislative classification. This implies the possesion by one or more other objects of characteristics so like those of the object contained in this law that the provisions that are appropriate to the one, are, for the same reason, appropriate to the others." (Italics added.)

24. Delmar v. Bergen Co., 117 N.J.L. 377, 189 Atl. 75 (E. & A. 1936).

25. Allison v. Corker, 67 N.J.L. 596, 52 Atl. 362, 60 L.R.A. 564 (E. & A. 1902).

26. Dover Township v. Van Kirk, *supra*, note 13.

of office and fix the salaries of certain officers therein;[27] an act giving one township, to the exclusion of others, special powers by associating it with cities;[28] an act designating an area less than a township as a tax district;[29] an act passed to take from a committee of a township and confer upon the commissioner of the borough the right of expending on the streets of the borough the road taxes raised herein;[30] an act limited to "Municipalities governed by commissioners;[31] an act providing for promotions in police departments in existence more than three years prior to passage of the act, and not affecting those in existence less than three years;[32] a proviso to an act of legislation that "it shall not apply in and to cities commonly known as 'seaside and summer resorts';"[33] an act creating two classes of tenement houses, one in cities bordering on the Atlantic Ocean and one in cities elsewhere in the state;[34] an act to establish a license and excise department in certain cities of over 15,000 inhabitants and in which the granting of licenses is not already vested in a board of excise or in the Court of Common Pleas;[35] an act making ownership and location the basis of a classification where property is owned by a county;[36] an act providing for separate methods of taxing railroad property.[37]

In holding invalid an act granting to certain individuals the right to plant oysters on lands of the state for the sole use of the occupant because it conferred an exclusive privilege upon a limited number of individuals who were distinguished from all other citizens by characteristics that bore no rational relation to the subject matter of the legis-

27. Helfer v. Simon, *supra*, note 14.
28. Van Giesen v. Bloomfield, *supra*, note 13.
29. Carter v. Wade, 59 N.J.L. 119, 35 Atl. 649 (S. C. 1896).
30. Ross v. Winsor, 48 N.J.L. 95, 2 Atl. 659 (S. C. 1886).
31. Dobbins v. Long Branch, 59 N.J.L. 146, 36 Atl. 482 (Ch 1897).
32. Westervelt v. Borough of Tenafly, *supra*, note 20.
33. Clark v. Cape May, 50 N.J.L. 558, 14 Atl. 581 (S. C. 1888).
34. Board of Tenement House Supervisors v. Mittleman, 104 N.J.L. 486, 141 Atl. 571 (S. C. 1928).
35. Closson v. Trenton, 48 N.J.L. 438, 5 Atl. 523 (S. C. 1886), *aff'd*, 9 Atl. 719 (E. & A. 1887), citing with approval Tiger v. Morris Co., 42 N.J.L. 631 (E. & A. 1880).
36. Secaucus v. Huber, 87 N.J.L. 464, 95 Atl. 123 (S. C. 1915).
37. Central R R. Co. v. State Board of Assessors, 75 N.J L. 771, 69 Atl. 239 (E. & A. 1907).

lation, Mr. Justice Van Syckle, speaking for the Supreme Court, said: "The state may grant rights in some of its land without disposing of all of its possessions, but it cannot select individuals or corporations as the objects of its bounty to the exclusion of the citizens of the state."[38]

In considering whether or not such laws are special or general, New Jersey courts, in accord with the courts of many other states,[39] have stated that the substance and necessary operation, as well as the form and the phraseology, must be carefully examined in detail, not for the purpose of passing on their merits or demerits, but in order to ascertain whether their substantial features, while applicable to larger counties are inapplicable to the smaller ones.[40]

The criterion for determining whether a law is special relates to the recipients of the grant rather than the territory within which the privileges are to be exercised.[41]

This act[42] can only become operative if two-thirds of the employees who attend the meeting called by the county superintendent shall adopt a resolution to form a corporation. The act does not specify the number of employees necessary to pass on the resolution other than to state *it must be approved by two-thirds of those present.* Neither does the act require that any employee voting on the resolution has to be a resident of the school district, municipality, or county in which he is em-

38. Post v. State, *supra,* note 20.

39. Mix v. Board of Commissioners of Pearce Co., 18 Idaho 695, 112 P 215, 32 L.R.A. (N.S.) 534 (1910); Ark-Ash Lumber Co. v. Pride & Fairley, 162 Ark. 235, 258 S.W. 335 (1924); State v. Cullum, 110 Conn. 291, 147 Atl. 804 (S. C. 1929); American Coal Co. v. Allegany County Commissioners, 128 Md. 564, 98 Atl. 143 (1916); Rockingham Power & Light Co. v. Philbrick, 79 N.H. 279, 108 Atl. 813 (1919); Roumfort Co. v. Delaney, 230 Pa. 374, 79 Atl. 653 (1911); State v. Phillips, 107 Maine 249, 78 Atl. 283 (1910); State v. Mayo, 106 Maine 62, 75 Atl. 295, 26 L.R.A. (N.S.) 502, 20 Am. Cas. 512 (1909).

40. Mortland v. Christian, *supra,* note 14; Erion v. Hoboken, *supra,* note 20; State v. Riordan, *supra,* note 20; Helfer v. Simon, *supra,* note 14; Ross v. Winsor, *supra,* note 30; Wanser v. Hoos, *supra,* note 5; Canfield v. Davis, 61 N.J.L. 26, 39 Atl. 357 (S. C. 1898); Delaware River Trans. Co. v. Trenton, 86 N.J.L. 48, 90 Atl. 731 (S. C. 1914), *aff'd,* 86 N.J.L. 679, 91 Atl. 1068 (E. & A. 1915).

41. State v. Price, 71 N.J.L. 249, 58 Atl. 1015 (S C. 1904), citing with approval Post v. State, *supra,* note 20.

42. See note 1.

ployed. Thus, if only three employees were present, a favorable vote by two of them, both of whom could be non-residents of the county, would be sufficient to cause the corporation to be formed, and the provisions of the act would then become mandatory upon the Boards of Education of the school districts located within the county. That this is a delegation of legislative powers contrary to the constitution is obvious because there is no case on record in this state in which it has been determined that a private citizen or group of citizens may determine whether or not a tax burden shall be imposed upon any municipality or group of municipalities. If this act is upheld, it will result in imposing the will of a few select individuals upon all school districts within the county without being passed upon by the voters therein. This is contrary to the rule[43] laid down by the Court of Errors and Appeals, which, tersely stated, is as follows: *"The legislative will may be imposed as law upon municipalities, but, if any other will is to intervene between the legislature and such municipalities, it must be the will of the people who are to be governed by such law and not an alien will, even though it be that of the governing body for the time being of the municipality."*[44] (Italics added.)

An act making it mandatory for mayors of cities of the second class to appoint three commissioners to divide the city into wards if petitioned by 50% or more of the aldermen was held unconstitutional because the act could be construed as meaning the petition could come from 50% or more of the membership acting, not as members of the board nor as voicing the sentiment of the board in session, but merely as a group of individuals.[45]

The power of levying taxation is peculiar to the legislature and can-

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43. Rutten v. Paterson, 73 N J L 467, 64 Atl. 573 (S. C. 1906); Booth v. McGuinness, 78 N.J L. 346, 75 Atl 455 (E. & A. 1910); McCarthy v. Walter, 108 N.J.L. 282, 156 Atl. 772 (E. & A. 1931).

44. Booth v. McGuinness, *supra,* note 43, at p. 384.

45. In Smith v. Middle Township, 92 N.J.L. 300, 301, 105 Atl. 877 (S. C. 1919), Mr. Justice Parker, referring to Rutten v. Paterson, *supra,* note 43, said: "What was condemned in those decisions was not the calling of a popular election to determine whether ward lines should be changed, upon the application of a small minority of citizens, *but the attempt to empower such a minority actually to effect the change by a mere petition making it mandatory on certain officials to proceed.*" (Italics added)

not be delegated by it.[46] However, the power to assess and collect taxes so levied may be delegated to political divisions or corporations of the state to be exercised within the limits of their respective districts.[47] But the amount of such taxes to be raised cannot be delegated.[48]

An act authorizing a sewerage district to be taxed within the limits of $9,000,000 and without any limit in the matter of maintenance was held to be an unconstitutional delegation of power.[49] Where a statute empowered the Court of Common Pleas, upon the initiative of ten (10) citizens *who were not required to be taxpayers or residents of the municipality concerned,* to appoint commissioners to determine the extent of the work to be done and the cost to be incurred, independent of any control by the voters, and required the municipality to pay the cost as ascertained by the commissioners, it was held to be an unconstitutional delegation of the taxing power.[50]

New Jersey's highest court has held that the legislature can delegate the taxing power only to political districts of the state to be exercised within their respective limits[51] and that some power of local self-gov-

46. State v. Sickles, 24 N.J.L. 125 (S. C. 1853); Van Cleve v. Passaic Valley Sewerage Commission, 71 N.J.L. 574, 60 Atl. 214, 108 Am. St. Rep. 754 (E. & A. 1905); Smith v. Smith, 50 N.J.L. 101, 11 Atl. 321 (S. C. 1887).

47. Township of Bernards v. Allen, 61 N.J.L. 228, 39 Atl. 716 (E. & A. 1897). "Every system of taxation consists of two parts—one the levying of taxes, the imposition of taxes on person or property; the other the assessment and collection of taxes. The first is a legislative function controlled by constitutional prescription; the other is mere machinery by which the legislative purpose is effectuated. . . . But the essential power of taxation, the power to levy a tax, cannot be delegated." See also State v. Smith, *supra;* Smith v. Howell, 60 N.J.L. 384, 38 Atl. 180 (S. C. 1897).

48. Township of Bernards v. Allen, *supra,* note 47.

49. Van Cleve v. Passaic Valley Sewerage Commission, *supra,* note 46. The Court, citing the Allen case, said: "Upon the authority of the case cited, this Court is unequivocally committed to the doctrine that the legislature of this state, in which the governmental power of taxation resides, does not possess the power to delegate to another body, having no governmental functions, the authority to determine in its judgment or discretion, the amount raised by taxation, to which obviously must be added that such authority is in effect so delegated if such body may be empowered to levy taxes to the amount of an indebtedness to be incurred by it in its judgment or discretion."

50. Midland Township v. Borough of Maywood, 80 N.J.L. 76, 76 Atl. 453 (S. C. 1910), *aff'd,* 82 N.J.L. 741, 82 Atl. 1134 (E. & A. 1912).

51. Van Cleve v. Passaic Valley Sewerage Commission, *supra,* note 46.

ernment is essential to every political district.[52]

The district to be taxed shall be coterminous with a district to which some right of local self-government is given. A sewerage district is not a political district within this classification.[53] The legislature has no power to impose a tax on any territory narrower than the political district of which it is a part.[54]

A law which does not operate equally on all of the classes to which it relates but creates preferences and establishes inequalities is not a general law and is unconstitutional.[55] Such an act is one providing a different method of levying taxes in boroughs which are seaside resorts from that provided for other boroughs.[56]

Many states, including New Jersey, hold that one tax district cannot be taxed for the benefit of another,[57] nor can one public agency be

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52. See note 51.

53. See note 51.

54. Baldwin v. Fuller, 39 N.J.L. 577, 583 (S. C. 1877). In an exhaustive analysis of the taxing power of the legislature, Mr. Justice Van Syckel said: "Under the theory of our state governments, all essential attributes of sovereignty, not expressly withheld or reserved, vest in the state. The general proposition, therefore, that the taxing power resides in th government as a part of itself; that it is inherent and need not be expressly reserved and that it may be legitimately exercised, on the objects to which it is applicable, to the utmost extent to which the legislature may choose to carry it for lawful purposes of taxation, will not be controverted. . . The true rule is that legitimate taxation is limited to the imposing of burdens, like those in question, so far as they are for the public benefit, upon the persons or property within the political district possessing powers of local government, so that the exactions are distributed over the entire territory, upon the rule of uniformity. If the constitutional guarantee is not so interpreted as to enforce this rule, the legislature may under the guise of taxation, appropriate private property to any extent to public use, without compensation." See also Agens v. Newark, 37 N.J.L. 415 (E. & A. 1874).

55. Van Riper v. Parsons, *supra*, note 6; Delmar v. Bergen County, *supra*, note 24.

56. State v. Philbrick, 50 N.J.L. 581, 15 Atl. 579 (S. C. 1888).

57. Elizabethtown Water Co. v. Wade, 59 N.J.L. 78, 35 Atl. 4 (S. C. 1896); Essex County Park Commission v. West Orange, 77 N.J.L. 573, 73 Atl. 511 (E. & A. 1908); Secaucus v. Huber, *supra*, note 36; Keith v. Lockhart, 171 N.C 451, 88 S.E. 640 (1916); Reeves v. Buncombe Co., 204 N.C. 45, 167 S.E. 452 (1933); Keene v. Roxbury, 81 N.H. 332, 126 Atl. 7 (1924); *In re* Opinion of the Justices, 84 N.H. 559, 149 Atl. 321 (1930), 190 Atl. 801 (1937).

forced to contribute towards the support of another.[58]

An attempt to impose the cost of lighting one district upon another district is unconstitutional,[59] and "the assessment of one school district for the benefit of another would be a palpable trespass upon the rights of private property."[60]

That this act[61] provides for the taxation of one district for the benefit of another seems clearly evident because it provides that in case of a deficit each school district in the county shall be taxed proportionately to make up that deficit, notwithstanding the fact it may have been created by the retirement on pension of a large number of employees of one district only. It is, therefore, believed unconstitutional, and the refusal of the Supreme Court to set aside the order of the Commissioner of Education erroneous.

Declaratory Judgment—Insurance Contract—Availability of an Alternative Remedy

Defendant company issued an indemnity policy to plaintiff providing that it would defend in the name of and on behalf of the latter any claims or suits brought against it. One Ferenz was fatally injured while in the employ of plaintiff, and his next of kin instituted suit against plaintiff. The insured alleged it was served with a summons and complaint, and that the insurer, claiming non-coverage, refused to defend as per indemnity policy. The insured sought a declaratory judgment that defendant was bound to defend. *Held,* that a declaratory judgment will be denied where no uncertainty in the legal relations of the parties exists, and where another remedy is available. *Dover Boiler Works v.*

58. Secaucus v. Huber, *supra,* note 36; Essex Co. Park Commission v. West Orange, *supra,* note 57.

59. In Baldwin v. Fuller, *supra,* note 54, Mr. Justice Van Syckel said: "It seems equally clear that a tax for a state purpose must fall upon the state at large; for county purposes, upon the county; and for the public uses of any lesser political district, upon such district."

60. Mr. Justice Van Syckel in Baldwin v. Fuller case, *supra,* note 54, at p. 586.

61. See note 1.