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enough for any such kid-glove institution.” (As reported by Lane, p. 128.) Others derided the university as a rich man’s school, providing no service to the poor children of Texas. Of course, with the later discovery of oil on these lands, the substitute grant of Section 15 turned out to be a boon for higher education in Texas.

Explanation

The oil-rich university fund lands are administered by the Board of Regents of The University of Texas System (Education Code sec. 65.39), and royalties from oil and gas production are part of the permanent university fund. (*Empire Gas and Fuel Co. v. State*, 121 Tex. 138, 47 S.W.2d 265 (1932); *State v. Hatcher*, 115 Tex. 332, 281 S.W. 192 (1926).)

For further discussion of the permanent university fund refer to the *Explanation* of Secs. 11, 11a, and 12.

Comparative Analysis

This section is unique to the Texas Constitution.

Author’s Comment

The section preserving the permanent university fund can easily be drafted to encompass the grant of Section 15; in fact, Section 11 as presently written includes this grant. Therefore, Section 15 is unnecessary and can be deleted.

Sec. 16. TERMS OF OFFICE. The Legislature shall fix by law the terms of all offices of the public school system and of the State institutions of higher education, inclusive, and the terms of members of the respective boards, not to exceed six years.

History

This section was added in 1928.

Explanation

The original Constitution of 1876 provided in Article XVI, Section 30, that the term of any office created by statute (and of any created by the constitution if no term was fixed) could not exceed two years. (See *Kimbrough v. Barnett*, 93 Tex. 301, 309, 55 S.W. 120, 123 (1900), and the annotation of Art. XVI, Sec. 30.) An exception to the restrictions of that constitutional provision, adopted in 1912 as Article XVI, Section 30a, authorized six-year terms for multimember boards if the terms of one-third of the members expired every two years. The courts held that Article XVI, Section 30a, applied only to state boards and not to local boards, including boards of school trustees. (See *San Antonio I.S.D. v. State*, 173 S.W. 525 (Tex. Civ. App.—San Antonio 1915, *writ ref’d*.) The terms of members of the boards of regents of state educational institutions could be extended under Section 30a, but those of local boards of trustees and other officers of the public education system (including state officers who were not members of a board) could be no longer than two years.

When this Section 16 was adopted in 1928, the Article XVI, Section 30, limit on terms of office for local school officials was removed; any term up to six years may now be fixed. Presumably, Section 16 also removed the restrictions of Article XVI, Section 30a, on boards of regents and other state boards concerned with the public school system or higher education so that their members’ terms may be four years, for example, and the boards need not consist of a number of members divisible by three.

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Article VII, Section 8, to the extent it deals with the terms of members of the State Board of Education, duplicates this section.

Comparative Analysis

Only three other state constitutions include mention of the terms of officers of a public education system. One authorizes the legislature to fix the terms of officers, other than the state superintendent, who supervise public instruction; one specifies that the terms of the board of trustees of a particular university be 12 years with one-third of them expiring every four years; and one requires terms with an even number of years not exceeding four. The *Model State Constitution* contains no provision on terms of office in the educational system.

Author's Comment

See the *Author's Comment* on Article XVI, Section 30.

Sec. 16. COUNTY TAXATION OF UNIVERSITY LANDS. All land mentioned in Sections 11, 12, and 15 of Article VII, of the Constitution of the State of Texas, now belonging to the University of Texas shall be subject to the taxation for county purposes to the same extent as lands privately owned; provided they shall be rendered for taxation upon values fixed by the State Tax Board; and providing that the State shall remit annually to each of the counties in which said lands are located an amount equal to the tax imposed upon said land for county purposes.

History

As a result of the vast land grants made to The University of Texas, many Texas counties contain large areas of this public land. The long-standing policy of the board of regents has been to execute mineral leases on these lands instead of offering them for outright sale. The property tax being the primary revenue source for counties, the thinking behind this section seems to have been to insure taxability of university fund lands for county purposes. (See Hankerson, "Special Governmental Districts," 35 *Texas L. Rev.* 1004 (1957).)

The section was added in 1930 and for no good reason was also called "Section 16" notwithstanding a Section 16 adopted in 1928.

Explanation

The policy underlying this section is clear enough, but why put it in the constitution? The section is probably a result of a conglomeration of ideas. First, proponents of this section may have assumed that the phrase "and all other property devoted exclusively to the use and benefit of the public" in Section 9 of Article XI exempted state-owned property in addition to the city and county-owned property exempted under that section. Fifteen years after the adoption of Section 16 (1930) the Texas Supreme Court seemed to agree with that construction of Article XI, Section 9. Such an interpretation is inconsistent, however, with the permissible exemption of public property allowed under Article VIII, Section 2. (See *Lower Colorado River Authority v. Chemical Bank & Trust*, 144 Tex. 326, 190 S.W.2d 48 (1945). For further discussion see the *Explanation* of Art. XI, Sec. 9.) Second, as suggested in the *History*, the drafters may simply have wanted a constitutional guarantee that the specified lands would be taxable by counties. Third, some might have held the notion that, notwithstanding Section 2 of Article VIII and Section 9 of Article XI, state property is exempt from taxation under some implied constitution-

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al limitation. The attorney general expressed this latter view some ten years after the adoption of this section:

It is our opinion that land belonging to the State of Texas is exempt from taxation unless there is an express enactment to that effect. We do not have any decisions from this jurisdiction directly on this point. . . . [W]hen the state decided that the land belonging to the Permanent University Fund should be subject to taxation for county purposes, it was necessary to adopt Article VII, Section 16(a) of the Constitution. (Tex. Att'y Gen. Op. No. 0-1861 (1940).)

The 1940 opinion quoted from above involved land acquired by The University of Texas under a will directing that the property be used by the university to establish and maintain a special lecture foundation (revenue derived from renting the land actually went to a designated scholarship fund). In ruling that the property was exempt from taxation the attorney general said that Section 16 (1930) did not apply to the land "because it is not a part of the Permanent University Fund, and it did not belong to the University at the time said amendment went into effect." (Emphasis added.) According to this opinion, then, Section 16 (1930) applies only to permanent university fund land, not to land donated to the university that is "limited to specific purposes" within the meaning of Section 11 and therefore excluded from the permanent fund. Furthermore, land dedicated to the permanent university fund after the effective date of Section 16 (1930) apparently is not covered. Though not explicitly stated in the opinion, this construction must rest on the phrase "now belonging to the University of Texas" in the first clause of Section 16 (1930).

The second and third clauses of this section have not been the subject of any authoritative writing to date. As a general rule, each individual county in Texas does its own appraising for property tax purposes. But under the second clause of this section appraisal of university fund land subject to county taxation is done by a state agency, the state tax board. The third and final clause is interesting in that it provides that the state (*i.e.*, the state general revenue fund), not The University of Texas, picks up the tab. (See, *e.g.*, the current appropriations act, Tex. Laws 1975, Ch. 743, which budgets \$260,000.00 for county taxes on university lands for fiscal 1975.)

Comparative Analysis

No similar provision appears in the constitution of any other state or the *Model State Constitution*.

Author's Comment

Whether the exception preserved in Section 16 need be included in a revised constitution will depend in large part upon the overall taxation structure adopted. (See Art. VIII, *Introductory Comment*.)

Sec. 17. STATE AD VALOREM TAX FOR PENSIONS AND FOR PERMANENT IMPROVEMENTS AT INSTITUTIONS OF HIGHER LEARNING. In lieu of the state ad valorem tax on property of Seven Cents (\$.07) on the One Hundred Dollars (\$100.00) valuation heretofore permitted to be levied by Section 51 of Article III, as amended, there is hereby levied, in addition to all other taxes permitted by the Constitution of Texas, a state ad valorem tax on property of Two Cents (\$.02) on the One Hundred Dollars (\$100.00) valuation for the purpose of creating a special fund for the continuing payment of Confederate pensions as provided under Section 51, Article III, and for the establishment and continued maintenance of the State Building Fund as

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provided in Section 51b, Article III, of the Constitution.

Also, there is hereby levied, in addition to all other taxes permitted by the Constitution of Texas, a state ad valorem tax on property of Ten Cents (\$.10) on the One Hundred Dollars (\$100.00) valuation for the purpose of creating a special fund for the purpose of acquiring, constructing and initially equipping buildings or other permanent improvements at the designated institutions of higher learning provided that none of the proceeds of this tax shall be used for auxiliary enterprises; and the governing board of each such institution of higher learning is fully authorized to pledge all or any part of said funds allotted to such institution as hereinafter provided, to secure bonds or notes issued for the purpose of acquiring, constructing and initially equipping such buildings or other permanent improvements at said respective institutions. Such bonds or notes shall be issued in such amounts as may be determined by the governing boards of said respective institutions, shall bear interest not to exceed four per cent (4%) per annum and shall mature serially or otherwise in not more than ten (10) years; provided further, that the state tax on property as heretofore permitted to be levied by Section 9 of Article VIII, as amended, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed Thirty Cents (\$.30) on the One Hundred Dollars (\$100.00) valuation. All bonds shall be examined and approved by the Attorney General of the State of Texas, and when so approved shall be incontestable; and all approved bonds shall be registered in the office of the Comptroller of Public Accounts of the State of Texas. Said bonds shall be sold only through competitive bids and shall never be sold for less than their par value and accrued interest.

The following state institutions then in existence shall be eligible to receive funds raised from said Ten Cent (\$.10) tax levy for the twelve-year period beginning January 1, 1966, and for the succeeding ten-year period:

- Arlington State College at Arlington
- Texas Technological College at Lubbock
- North Texas State University at Denton
- Lamar State College of Technology at Beaumont
- Texas College of Arts and Industries at Kingsville
- Texas Woman's University at Denton
- Texas Southern University at Houston
- Midwestern University at Wichita Falls
- University of Houston at Houston
- Pan American College at Edinburg
- East Texas State College at Commerce
- Sam Houston State Teachers College at Huntsville
- Southwest Texas State College at San Marcos
- West Texas State University at Canyon
- Stephen F. Austin State College at Nacogdoches
- Sul Ross State College at Alpine
- Angelo State College at San Angelo.

Eighty-five percent (85%) of such funds shall be allocated by the Comptroller of Public Accounts of the State of Texas on June 1, 1966, and fifteen per cent (15%) of such funds shall be allocated by said Comptroller on June 1, 1972, based on the following determinations:

(1) Ninety per cent (90%) of the funds allocated on June 1, 1966, shall be allocated to state institutions based on projected enrollment increases published by the Coordinating Board, Texas College and University System for fall 1966 to fall 1978.

(2) Ten per cent (10%) of the funds allocated on June 1, 1966, shall be allocated to certain of the eligible state institutions based on the number of additional square feet needed in educational and general facilities by such eligible state institution to meet the average square feet per full time equivalent student of all state senior institutions (currently numbering twenty-two).

(3) All of the funds allocated on June 1, 1972, shall be allocated to certain of the eligible state institutions based on determinations used in the June 1, 1966, allocations except that the allocation of fifty per cent (50%) of the funds allocated on June 1, 1972, shall be based on projected enrollment increases for fall 1972 to fall 1978, and fifty per cent (50%) of such funds allocated on June 1, 1972, shall be based on the need for

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additional square feet of educational and general facilities.

Not later than June first of the beginning year of each succeeding ten-year period the Comptroller of Public Accounts of the State of Texas shall reallocate eighty-five per cent (85%) of the funds to be derived from said Ten Cent (\$.10) ad valorem tax for said ten-year period and not later than June first of the sixth year of each succeeding ten-year period said Comptroller shall reallocate fifteen per cent (15%) of such funds to the eligible state institutions then in existence based on determinations for the said ten-year period that are similar to the determinations used in allocating funds during the twelve-year period beginning January 1, 1966, except that enrollment projections for succeeding ten-year periods will be from the fall semester of the first year to the fall semester of the tenth year. All such designated institutions of higher learning shall not thereafter receive any general revenue funds for the acquiring or constructing of buildings or other permanent improvements for which said Ten Cent (\$.10) ad valorem tax is herein provided, except in case of fire, flood, storm, or earthquake occurring at any such institution, in which case an appropriation in an amount sufficient to replace the uninsured loss so incurred may be made by the Legislature out of any General Revenue Funds. The State Comptroller of Public Accounts shall draw all necessary and proper warrants upon the State Treasury in order to carry out the purpose of this Amendment, and the State Treasurer shall pay warrants so issued out of the special fund hereby created for said purpose. This Amendment shall be self-enacting. It shall become operative or effective upon its adoption so as to supersede and repeal the former provisions of this Section; provided further, that nothing herein shall be construed as impairing the obligation incurred by any outstanding notes or bonds heretofore issued by any state institution of higher learning under this Section prior to the adoption of this Amendment but such notes or bonds shall be paid, both as to principal and interest, from the fund as allocated to any such institution.

History

This section was added in 1947. In the 1947 version the first paragraph differed from the present wording in two substantive respects: no mention was made of the State Building Fund—it came into existence in 1954—and the paragraph ended with an authorization to the legislature to reduce the 2¢ tax. The second paragraph picked up the 5¢ taken from the Confederate Pensions tax (then in Sec. 51 of Art. III) and levied it to create annual income which could be pledged to retire bonds issued by certain state colleges for construction and initial equipment of buildings. There were numerous details, many of which still remain. One major provision ended the power to issue the bonds 30 years from the effective date of the amendment and ended the 5¢ tax after all bonds were retired, a period that could be an additional ten years. The third paragraph allocated the income for the first ten years among 14 colleges by specific percentages carried to five decimal places. The fourth paragraph contained details for allocating the money for each succeeding ten-year period. The paragraph also forbade providing other state funds for buildings except to restore losses from fires and acts of God. Finally, the paragraph contained the telltale confession that most of the section was statutory: “This amendment shall be self-enacting.”

The statutory rigidity of the section was presumably the reason that it was soon amended. The 1956 amendment made a necessary change in the first paragraph but the change as made was ridiculous. In 1954 Section 51-b of Article III was adopted. One of its provisions took the 2¢ away from Section 17 and “hereby levied” it under Section 51-b. Instead of dropping the first paragraph altogether, the end of the paragraph was redrafted to refer to Section 51-b. (The present version is substantially the same as the 1956 version. Both refer to Section “51b,” not “51-b,”) The result is that two sections, 17 and 51-b, battle with each other to levy the same 2¢ tax.

The second paragraph retained more or less the same details except that the

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myth that this would all end was changed to a certain date, September 1, 1978, instead of December 31, 1986, the outside date found in the original wording. The paragraph continued the provision that the state property tax permitted under Section 9 of Article VIII was limited to 30¢ even though Section 1-a of Article VIII, adopted in 1948, had abolished the tax as of January 1, 1951.

The third paragraph allocated the income among 12 colleges instead of 14 for what was now to be the second ten-year period. Instead of percentages to five decimal places, the formula from the original fourth paragraph was used, but with perfecting language as befits a "statute." Part of the original formula used the words "full-time student." In the 1956 version the following appeared: "(fifteen (15) semester credit hours shall constitute one full-time student)." (This is a strange definition; students are normally human beings.)

The fourth paragraph repeated the new allocation formula, the act of God exception, and the self-enactment statement. This last item suddenly became complicated. Having said "This amendment shall be self-enacting," the drafter realized apparently that he had problems, for he went on to say that it (a) did not become effective upon adoption; (b) did not repeal or suspend the original Section 17; (c) would become operative on January 1, 1958; (d) did not impair anything done under the original section; (e) folded into the section some actions undertaken pursuant to a named statute; and (f) repealed the statute. It should be noted that there was a single vote in 1956 on this amendment, an amendment of Section 18, and a new Section 11a. All three sections have since been amended, which makes it a rather pointless exercise to spell out the 1956 interrelationships among them.

The 1956 perfecting amendment also lasted less than ten years. The current version dates from November 2, 1965.

Explanation

This section presently does two things. First, it levies a tax, something that belongs in the article on revenue and taxation. Second, it provides in the most excessive detail for the use of the tax money for higher education. The two will be discussed separately.

The tax. The first paragraph, as noted in the *History*, is inoperative. The second paragraph levies a 10¢ ad valorem state property tax. If Section 1-e of Article VIII remains effective, this 10¢ tax will be the only state property tax after December 31, 1978. The second paragraph still continues the obsolete provision concerning the state property tax formerly authorized by Section 9 of Article VIII.

The tax proceeds. The second paragraph dedicates tax proceeds to a special building fund for the stated purpose "of acquiring, constructing and initially equipping buildings or other permanent improvements at the designated institutions" The attorney general on several occasions has ruled that this means additional structures or improvements resulting in expansion of existing facilities, not repair or alteration of existing facilities. (Tex. Att'y Gen. Op. Nos. V-1427 (1952); V-931 (1949); and V-848 (1949).) The governing board of each institution is directly granted authority to pledge "all or any part" of its allocated share of the building fund to secure bonds to finance the authorized permanent improvements. Unlike Section 18, which permits a 30-year maturity for permanent university fund bonds, this section limits building fund bonds to a maximum maturity of ten years. The 4 percent interest ceiling is no longer operative because of the addition in 1972 of Section 65 of Article III raising the ceiling to "a weighted average annual interest rate of 6%."

Inclusion of "Arlington State College" (now The University of Texas at

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Arlington) is somewhat of an anomaly and is illustrative of the chaos extant in higher education organization in Texas. The school is part of the "statutory" University of Texas System for administrative purposes but participates in the Section 17 college building fund rather than the Section 18 University of Texas System bonding program. When the school was in Section 18 (prior to the 1965 and 1966 amendments; see the *History* of Section 18), it was part of the Texas A&M System.

A remarkable feature of Section 17 is the absence of any maximum debt limitation, certainly an aberration insofar as Texas constitutional debt provisions are concerned. See the *Author's Comment* on this section for further discussion.

The 1965 amendment increased the number of participating institutions from 12 to 17 and inaugurated a rather complicated allocation formula that is based not only on enrollment (as had been done since 1947) but also on an additional factor:

... the number of additional square feet needed in educational and general facilities by such eligible institutions to meet the average square feet per full time equivalent student of all state senior college institutions (currently numbering twenty-two).

The proceeds are allocated for successive ten-year periods after the first, a 12-year period that began in 1966 and will end in 1978.

The comptroller's computation of allocations for each decennium is done in two separate stages: the first at the beginning of the ten-year interval and the second "no later than June first of the sixth year." In the first stage the comptroller allocates among the participating schools 85 percent of the proceeds for that ten-year period, and in the second stage he allocates the remaining 15 percent, but according to a different formula. Ninety percent of the first-stage proceeds (*i.e.*, 90 percent of 85 percent of the total for the ten-year period) is allocated on the basis of projected enrollment at each school and the other 10 percent on the square-foot factor. In allocating the second-stage proceeds (*i.e.*, 15 percent of the ten-year total), the two factors (*i.e.*, projected enrollment and square footage) are given equal weight. This process of allocation was apparently adopted in response to criticism that the previous method, based solely on student enrollment, was a grossly inaccurate way to determine the varying capital needs of participating institutions. (See Texas Legislative Council, *Public Higher Education in Texas* (Austin, 1950), p. 118.)

The provision precluding general revenue appropriations to participating schools for capital improvements (except to replace losses from natural disasters) parallels a provision in Section 18 pertaining to The University of Texas and Texas A&M systems.

Comparative Analysis

Obviously, Section 17 is peculiar to the Texas Constitution.

Author's Comment

This section represents bad constitution making with an abundance of irony. The delegates to the 1875 Convention, recognizing the great foresight of their predecessors, preserved the public domain set aside for higher education. Unfortunately, the delegates used a term, "The University of Texas," to denominate "higher education." Over the years some institutions of higher education were created that were not included under the umbrella term "The University of Texas." Thus, the first irony: By misguided specificity, the delegates, who were surely interested in higher education as such, had created two levels of higher education, one favored by a constitutional capital fund, the other dependent wholly upon

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legislative largesse.

Obviously, this is an intolerable situation. The sensible solution would be to include all higher education under the capital fund. But this would not be acceptable to “The University of Texas,” since it would lose by having to share its income from the capital fund with others. Thus, the second irony: One would think that a university in pursuit of the truth would rise to the logic of the situation; but, alas, an institution faced with a choice whether to adhere to its principles or preserve its status, tends to fudge the principles. Therefore, the “inferior” higher institutions must try to elevate themselves to the same status as the favored “The University of Texas.” This can be done only through the constitution.

Consequently, the other institutions ask for a fund just like the permanent university fund. But this is easier said than done. There is no more public domain to set aside, no capital to earmark. The only solution is to earmark tax funds. Thus, irony number three: The legislature, which must elevate the other institutions to constitutional status by proposing amendments, combined their legislative policy with their constitutional policy; having decreed by statute that income from the permanent university fund must be used for capital improvements and not for operating expenses, the legislature proposed an amendment that earmarks annual tax income to pay for capital improvements for the other institutions. Thus, irony number four: Whatever simplistic logic transformed income from capital endowment for The University of Texas into creation of capital assets is transferred to the other institutions of higher education.

This confusion having been created, how can it be unraveled? There is surely no good reason for killing off the permanent university fund; this would simply tempt a lot of people to live on capital until it was gone. So long as there is flexibility in administration of investment, the existence of the fund does not hamper the government; so long as the income is not too large there is no misallocation of available resources. But it is undoubtedly not politically feasible either to divert some of the permanent fund income to the other institutions or to tell them that they cannot have any comparable constitutional guarantee of money. One solution would be to tie an appropriation for the other institutions to the permanent fund income. A model section might read thus:

The Permanent University Fund is preserved and the income therefrom may be used only by The University of Texas System and the Texas A&M System for such educational purposes as may be specified by general law. Each year [or each biennium] there is to be appropriated to all other state senior institutions of higher learning an amount in the aggregate at least as large as the estimated income from the Permanent University Fund for the same period. The appropriation may be used only for the same purposes specified in the general law governing uses of the income from the Permanent University Fund.

The foregoing is not ideal, but there is no ideal short of letting all higher educational institutions share in the income. But the suggestion preserves the status of The University of Texas and Texas A&M Systems, preserves the purpose of the 10¢ tax without freezing the tax in the constitution, and leaves neither The University of Texas and Texas A&M Systems nor the other institutions in a position of gaining or losing – something which can happen today if fund income goes up and tax receipts go down, or vice versa.

The bond authorization of Section 17 is, of course, required because of Section 49 of Article III prohibiting state debt. Unlike most other Texas constitutional debt authorizations (e.g., Art. III, Secs. 49-c, 49-e, and 50b), which are payable from the state’s general revenue fund, Section 17 bonds are payable out of dedicated tax proceeds. While other constitutional bond authorizations prescribe a definite debt

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ceiling, this section permits perpetual issuance of bonds, so long as annual dedicated tax revenues are sufficient to meet annual debt service requirements. In essence, Section 17 authorizes "revolving" or perpetual debt. Those who would revise the constitution should consider the wisdom of continuing a system of financing capital improvements for higher education that is substantially insulated from control by the people.

Sec. 18. TEXAS A&M UNIVERSITY SYSTEM; UNIVERSITY OF TEXAS SYSTEM; BONDS OR NOTES PAYABLE FROM INCOME OF PERMANENT UNIVERSITY FUND. For the purpose of constructing, equipping, or acquiring buildings or other permanent improvements for the Texas A&M University System, including Texas A&M University, Prairie View Agricultural and Mechanical College of Texas at Prairie View, Tarleton State College at Stephenville, Texas Agricultural Experiment Stations, Texas Agricultural Extension Service, Texas Engineering Experiment Station at College Station, Texas Engineering Extension Service at College Station, and the Texas Forest Service, the Board of Directors is hereby authorized to issue negotiable bonds or notes not to exceed a total amount of one-third ($\frac{1}{3}$) of twenty per cent (20%) of the value of the Permanent University Fund exclusive of real estate at the time of any issuance thereof; provided, however, no building or other permanent improvement shall be acquired or constructed hereunder for use by any part of the Texas A&M University System, except at and for the use of the general academic institutions of said System, namely, Texas A&M University, Tarleton State College, and Prairie View A&M College, without the prior approval of the Legislature or of such agency as may be authorized by the Legislature to grant such approval; and for the purpose of constructing, equipping, or acquiring buildings or other permanent improvements for The University of Texas System, including the Main University of Texas at Austin, The University of Texas Medical Branch at Galveston, The University of Texas Southwestern Medical School at Dallas, The University of Texas Dental Branch at Houston, Texas Western College of The University of Texas at El Paso, The University of Texas M. D. Anderson Hospital and Tumor Institute at Houston, The University of Texas Postgraduate School of Medicine, The University of Texas School of Public Health, McDonald Observatory at Mount Locke, and the Marine Science Institute at Port Aransas, the Board of Regents of The University of Texas is hereby authorized to issue negotiable bonds and notes not to exceed a total amount of two-thirds ($\frac{2}{3}$) of twenty per cent (20%) of the value of the Permanent University Fund exclusive of real estate at the time of any issuance thereof; provided, however, no building or other permanent improvement shall be acquired or constructed hereunder for use by any institution of The University of Texas System, except at and for the use of the general academic institutions of said System, namely, The Main University and Texas Western College, without the prior approval of the Legislature or of such agency as may be authorized by the Legislature to grant such approval. Any bonds or notes issued hereunder shall be payable solely out of the income from the Permanent University Fund. Bonds or notes so issued shall mature serially or otherwise not more than thirty (30) years from their respective dates.

The Texas A&M University System and all of the institutions constituting such System as hereinabove enumerated, and The University of Texas System, and all of the institutions constituting such System as hereinabove enumerated, shall not receive any General Revenue funds for the acquiring or constructing of buildings or other permanent improvements, except in case of fire, flood, storm, or earthquake occurring at any such institution, in which case an appropriation in an amount sufficient to replace the uninsured loss so incurred may be made by the Legislature out of General Revenue funds.

Said Boards are severally authorized to pledge the whole or any part of the respective interests of Texas A&M University and of The University of Texas in the income from the Permanent University Fund, as such interests are now apportioned by Chapter 42 of the Acts of the Regular Session of the 42nd Legislature of the State of Texas, for the purpose of securing the payment of the principal and interest of such bonds or notes. The Permanent University Fund may be invested in such bonds or notes.

All bonds or notes issued pursuant hereto shall be approved by the Attorney General of Texas and when so approved shall be incontestable. This Amendment shall be self-enacting; provided, however, that nothing herein shall be construed as impairing any obligation heretofore created by the issuance of any outstanding notes or bonds under this Section by the respective Boards prior to the adoption of this Amendment but any such outstanding notes or bonds shall be paid in full, both principal and interest, in accordance with the terms of such contracts.

History

Section 18 was adopted in 1947 at the same time that Section 17 was adopted. The purpose was also the same as that of Section 17: to provide a means of raising capital for expansion necessitated by the post-war influx of students. The original version authorized a bond issue of \$10 million for "The University of Texas" and \$5 million for the "Agricultural and Mechanical College of Texas," payable out of permanent university fund income. An amendment in 1956 among other things raised the debt ceiling to a maximum of two-thirds (for the University of Texas System) and one-third (for the then A&M College System) of 20 percent of the value of the permanent university fund. The 1956 amendment also enumerated the specific schools included in each system and lengthened the bond-maturity limitation from 20 to 30 years. By amendment in 1966 Arlington State College (now the University of Texas at Arlington) was removed from the A&M System; the previous year that school had been placed in the college building fund by amendment to Section 17.

Explanation

This section does essentially the same thing for the Texas A&M University System and The University of Texas System as the preceding section does for the 17 designated schools, except that Section 18 bonds and notes are payable out of the available university fund rather than a dedicated state property tax. Like Section 17, this section directly grants the systems' governing boards authority to issue bonds or notes, but, without all the complicated allocation detail spelled out, the boards under Section 18 have much more discretion in determining which schools get how much. The third paragraph, however, does freeze the traditional statutory one-third/two-thirds division of the available fund to the extent required for debt service. (See also the *Explanation* of Sec. 11.) It should also be noted that since Section 18 does not specify a maximum interest rate, the maximum prescribed by Article III, Section 65, does not apply, leaving the regents free to set interest as high as necessary to sell the bonds.

Section 18 bonds and notes may be issued only for use by the institutions specified in the section, not for institutions made part of either system by statute. (Tex. Att'y Gen. Op. No. WW-783 (1960).)

Comparative Analysis

Section 18 is unique to the Texas Constitution.

Author's Comment

Like Section 17, Section 18 is one of several constitutional provisions necessitated by Section 49 of Article III. But unlike Section 17, debt under this section is payable out of permanent university fund income, not taxes. Under these circumstances it is perhaps justifiable to lodge bond-issuing authority directly in the regents. (For related discussion see the *Author's Comment* on Sec. 17.)