

1914

INCORPORATION OF MUNICIPALITIES

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INCORPORATION OF MUNICIPALITIES.

Assembly Constitutional Amendment 81 amending section 6 of article XI of constitution.

Present section unchanged except in following particulars: Legislature may provide that county officers shall perform municipal functions of municipalities incorporated under general laws when electors thereof so determine; municipalities hereafter organized under charters, and those heretofore so organized, when empowered by charter amendment, may legislate respecting municipal affairs, subject only to charter restrictions; in other matters they are subject to general laws; municipal charters may require county officers to perform municipal functions whenever general laws or county charter authorize such performance.

Assembly Constitutional Amendment No. 81, a resolution to propose to the people of the State of California an amendment to section six of article eleven of the Constitution of the State of California relating to municipal corporations.

The legislature of the State of California, at its regular session commencing on the sixth day of January, 1913, two thirds of the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes that section six of article XI of the Constitution of the State of California be amended to read as follows:

PROPOSED LAW.

Section 6. Corporations for municipal purposes shall not be created by special laws; but the legislature shall, by general laws, provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed; and the legislature may, by general laws, provide for the performance by county officers of certain of the municipal functions of cities and towns so incorporated, whenever a majority of the electors of any such city or town voting at a general or special election shall so determine. Cities and towns heretofore organized or incorporated may become organized under the general laws passed for that purpose, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith. Cities and towns hereafter organized under charters framed and adopted by authority of this constitution are hereby empowered, and cities and towns heretofore organized by authority of this constitution may amend their charters in the manner authorized by this constitution so as to become likewise empowered hereunder, to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to and controlled by general laws. Cities and towns heretofore or hereafter organized by authority of this constitution may, by charter provision or amendment, provide for the performance by county officers of certain of their municipal functions, whenever the discharge of such municipal functions by county officers is authorized by general laws or by the provisions of a county charter framed and adopted by authority of this constitution.

Section 6, article XI, proposed to be amended, now reads as follows:

EXISTING LAW.

Section 6. Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this constitution, except in municipal affairs, shall be subject to and controlled by general laws.

ARGUMENT IN FAVOR OF ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 81.

The purpose of this amendment is to make effective section 6 of article XI of the constitution as amended in 1896. Section 6 as originally adopted in 1879, while purporting to secure municipal home rule, provided that all city charters should be subject to and controlled by general laws. The supreme court pointed out that local government was being constantly "frittered away" by laws enacted by the legislature, so that freeholders' charters were giving only the semblance and not the substance of self-government. Accordingly, the words "except in municipal affairs," were inserted by amendment in 1896, with the intent and purpose to exempt municipalities from the operation of general legislation in strictly municipal matters. But the revision was so ill-phrased that the supreme court was compelled to hold that the only way for a city to gain the advantage intended by the amendment of 1896 was to incorporate each and every possible municipal affair in its charter. An illogical and impracticable task was set before the cities of the state, and the attempt to work it out has resulted in long and cumbersome charters.

The amendment now submitted proposes to relieve this situation and to apply a just and logical remedy. While reserving to the state legislature exclusive control over matters of general concern, it grants to cities and towns jurisdiction in all municipal affairs without need of specifying them in the charter. Of course, if a city should attempt to transcend the limits of a "municipal affair," its act will be declared void, for the determination of what are "municipal affairs" and what are "state affairs" will remain, as now, a matter for judicial construction.

In order to run no risk of endangering or demoralizing the present status of chartered cities, it is distinctly provided that this grant of jurisdiction in municipal affairs shall be self-executing only in the case of charters to be hereafter framed and adopted. With regard to existing charters, it will be necessary for them to be expressly revised in order to come under the operation of this amendment.

Another feature of the proposed amendment, conceived in the interest of efficiency and economy, is to make possible a general law or county charter which will authorize the performance of certain municipal functions by county officers, whenever the electors of the city concerned shall duly and properly register their desire to that effect. It is intended that this shall work in with the provisions of section 7 1/2 of article XI relating to county charters.

The amendment as a whole is designed, in accordance with the best thought and practice of the day, to encourage municipalities to proceed unhampered in the development of measures of local and municipal concern. The sovereignty and integrity of the state, acting through the legislature and by direct legislation on the part of the people, is rigidly safeguarded, while local enterprise and initiative in local matters is directly authorized.

W. M. C. CLARK,
Assemblyman Thirty-seventh District.

W. A. JOHNSTONS,
Assemblyman Sixty-eighth District.