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Mellor Press, Trenton, N. J.

NOTICE OF APPEAL.

(Filed November 15, 1920.)

New Jersey Supreme Court

FREDERIC L. HULME, *Prosecutor,* *vs.* FRED'K W. DONNELLY ET AL., BOARD OF COMMISSIONERS OF THE CITY OF TRENTON, *Defendants.*	On Certiorari. Notice of Appeal.

10

To Henry M. Hartmann, Attorney for Fred'k W. Donnelly and the Board of Commissioners of the City of Trenton, and Pierre P. Garven and John F. Drewen, Jr., Attorneys for the State Firemen's Association:

20

TAKE NOTICE, that the Prosecutor, appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above entitled cause on the following grounds:

1. That the act of April 15, 1920, being Chapter 160 of the Laws of 1920, is unconstitutional inasmuch as the true object of that statute is not expressed in the title.

30

2. The statute is a special law and not a general one, in violation of the mandate of the Constitution in such case made and provided.

3. The statute is unconstitutional in that on certain municipalities of this State it confers the privilege of referendum or adoption of its provisions, and in other municipalities it is mandatory legislation without any adoption of its provisions by them, and in those municipalities in which it became mandatory, upon its passage, it authorizes in some, but not in all, pensions and retirement.

4. That the act embraces both police and fire

matters, which are not related to each other, and is, therefore, in violation of paragraph 4, of section 7, of Article 4, of the Constitution.

5. It is not within the power of the Legislature to make the act of April 15, 1920, effective immediately in municipalities which have set up a pension system and make its operation optional in municipalities which have not.

6. The act is in divers other respects unconstitutional, null and void. 10

And the decision of the Supreme Court should have so adjudged.

CHAS. E. BIRD,
Attorney for Prosecutor.

ACKNOWLEDGMENT OF SERVICE OF NOTICE OF APPEAL.

Service of a copy of the within Notice of Appeal 20 is hereby acknowledged this 12th day of November, 1920.

HENRY M. HARTMANN,
PIERRE P. GARVEN,
Per H. M. H.
Attorneys of Defendants.

30

RULE DISMISSING WRIT.

(Entered November 15, 1920.)

NEW JERSEY SUPREME COURT.

FREDERIC L. HULME, *Prosecutor,* *vs.* FRED'K W. DONNELLY ET ALS., BOARD OF COMMISSIONERS OF THE CITY OF TRENTON, *Defendants.*	On Certiorari. Rule Dismissing Writ.

10

The court having inspected the transcript and proceedings of the Board of Commissioners of the City of Trenton, returned with the certiorari in this cause, the reasons assigned for setting aside the resolution brought up for review, and heard the argument of counsel thereon, and maturely considered the same do order that the said writ be dismissed with costs.

20

On motion of

HENRY M. HARTMANN,
Attorney for Defendants.

Entered November 15, 1920.

CLERK'S CERTIFICATE.

30

I, Enoch L. Johnson, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the Court in the above-stated cause.

[L. S.] In testimony whereof I have set my hand and the seal of said Court at Trenton, this 15th day of November A. D. nineteen hundred and twenty.

ENOCH L. JOHNSON,
Clerk.

OPINION.

(*Filed October 19, 1920.*)

NEW JERSEY SUPREME COURT.
JUNE TERM, 1920.

FREDERIC L. HULME,
vs.
BOARD OF COMMISSIONERS OF
TRENTON.

Submitted June term, 1920. Decided October 19, 1920. Chapter 160 of the Laws of 1920 is constitutional legislation: 10

1. The title sufficiently indicates the object of the statute.

2. Legislation as to retirement and pensions for firemen and for policemen have a proper relation to each other.

3. The legislature may enact that legislation as to the retirement and pensions of policemen and firemen shall take effect at once in municipalities already having a pension fund for firemen or a pension fund for policemen and shall not take effect until after a favorable vote at an election in other municipalities. 20

CERTIORARI:

Before Justices Swayze and Black.

Charles E. Bird and Aaron V. Dawes for prosecutor.

Henry Hartmann for defendant.

Pierre P. Garven and John F. Drewen, Jr., for State Firemen's Association. 30

The opinion of the Court was delivered by SWAYZE, J:

The question is the constitutionality of the act of 1920 for the pensioning of policemen and firemen. (Chapter 160, P. L. 324.)

The act is assailed on the ground that its object is not expressed in the title, because incongmous subjects are included, and because it is special. The title in so many words indicates that the object of the act

is to provide for the retirement of policemen and firemen in municipalities including police officers having supervision or regulation of traffic on county roads, and to provide a pension for such retired policemen and firemen and members of the police and fire department and widows and dependents of deceased members of said departments. As nearly as we can understand the objection is that the act was really meant to apply only to certain cities and to
10 compel in those cities retirement at sixty-five years of age. We fail to see any reason why the legislature might not include all municipalities within the scope of the act and embrace all in the title.

Prior to the decision in Herman & Grace vs. Freeholders of Essex (71 N. J. Eq. 541; affirmed on opinion 73 N. J. Eq. 415) it might perhaps have been said that traffic policemen on county roads were not embraced in a title which purports to provide for the retirement and pensioning of policemen and fire-
20 men in municipalities. We see no reason why the definition of the word municipality should not have the same scope in the present statute as in the statute then under review. The same definition was adopted in Union Stowe Co. vs. Freeholders of Hudson, (71 N. J. Eq. 657); in Burtis vs. Haines, 91 N. J. L. 4; in Murphy vs. Freeholders of Hudson, 91 N. J. L. 40.

There is nothing in the title to limit the application of the act and the object is plainly pointed out. Pos-
30 sibly it is arguable that the retirement and pensioning of policemen has no proper relation to the retirement and pensioning of firemen, but we are not to set aside acts of the legislature on nice distinctions of rhetoric and logic. The constitutional provision was meant to prevent the concealment of the real object of the act and what is commonly called log-rolling. The incongruity of the object of a statute in its application to the facts must depend on the existing state of the law just as the Court of Errors and Appeals has held that the object expressed in the title must give notice of the effect of the legislation to one con-

versant with the existing state of the law, Sawter vs. Shoenthal, 83 N. J. L. 499, 501, 502, and we may add existing customs of the people, and habits so to speak of the language. In this view, it cannot be denied that policemen and firemen have long been coupled as public servants sufficiently alike to justify legislation for both together. The practice goes back certainly as far as the Civil Service Act of 1885, C. S. 2341, and we do not know that its propriety has ever been questioned. The reason is that policemen and firemen alike have to do with the protection of the public and are engaged in occupations always of some and often of great hazard to themselves. The same may be said of officers and employees of the health service but the risk they run while it may be as great is not as conspicuous and their place in the public service is a matter of more recent growth. Moreover the similarity of the work of policemen and firemen is such that the Legislature might properly think it desirable to make their reward similar in order that the two careers might offer equal inducements. We do not mean to say that it would be incongruous to include men in the health service in such an act as this, or even to include all public servants in a general pension act. The justification of including policemen and firemen is to be found in the legislative practise of more than thirty years as exhibited in the Compiled Statutes under the head of Fire and Police. The title clearly indicates the object of the act, and the things inter-mixed in the act have a proper relation to each other.

The act is also assailed as special legislation. One phase of this objection has already been disposed of. The particular point of the present objection is that the act takes effect immediately in every municipality in which a fund for the retirement or pensioning of policemen or firemen or either is now in effect, but does not take effect in any other municipality until adopted by the voters at an election. This objection is not tenable under Lohan vs. Thompson 88 N. J. L. 40, so far as the distinction arises out of the statu-

tory provision for a referendum. The requirement of a referendum where there is no present provision for a pension fund is justified by the consideration that where there is already such a provision, the people may well be supposed to have adopted the principle and there is no need of a further vote; where there is already no such provision the Legislature might well think that the people should have the same chance to adopt or reject the principle as the others 10 have already had.

The new element presented by this statute is that it goes into effect without a referendum as to policemen if there is a firemen's pension fund in the municipality and as to firemen if there is a policemen's pension fund, and it may be argued with some force that if the voters are to have a choice, they should have it at least in cases where the people have not already indicated their approval of the principle of compulsory retirement and a pension. The answer 20 is that the Legislature for the reasons we have already stated may well think uniformity in the treatment of firemen and policemen may be desirable and one step in that direction is to provide for retirement and a pension for both policemen and firemen where existing legislation provides for only one.

The examination of the case has suggested to us another difficulty. The act applies to traffic policemen upon county roads. If there are traffic policemen on other than county roads or if there are police- 30 men on county roads other than traffic policemen, we should have greater difficulty in defending the generality of the legislation. There is no proof that such is the fact and our attention is not called to any statute providing for such policemen. One must speak with hesitation on a matter relating to the legislation as to roads, but our own examination of the statutes shows no statutory provision except that authorizing traffic policemen on county roads in first class counties. (P. L. 1911, 5,831, Supp. to C. S. 1,377). As far as appears in this case, the act of 1920 legislates for all.

The certiorari should be dismissed with costs.

New Jersey Supreme Court

FREDERIC L. HULME, *Prosecutor,* vs. FRED'K W. DONNELLY ET AL., BOARD OF COMMISSIONERS OF THE CITY OF TRENTON, *Defendants.*	On Certiorari. Facts Admitted.

10

WRIT AND RETURN.
(*Filed May 8, 1920.*)

STATE OF NEW JERSEY, TO WIT:

[L. S.] To Frederick W. Donnelly, J. Ridgway Fell, George B. LaBarre, Edward W. Lee and George W. Page, Board of Commissioners of the City of Trenton, Greeting: 20

We being willing, for certain reasons, to be certified of and concerning a certain resolution passed by you May 7, 1920, appropriating the sum of Fifty-eight Hundred Dollars ($5800), and providing for its payment to a pension fund created by an act of the Legislature of the State of New Jersey approved April 15, 1920, being Chapter 160 of the Laws of 1920, do require that such resolution and all other matters touching and concerning the same, you do certify and send, together with this writ, to our justices of the Supreme Court of Judicature, at Trenton, on the 15th day of May, 1920, that therein may be caused to be done what of right and according to law ought to be done. 30

Witness, the Honorable William S. Gummere, Chief Justice of our said Supreme Court, at Trenton, this eighth day of May, 1920.

ENOCH L. JOHNSON,
Clerk.

RETURN.

In obedience to the command of this writ, to us directed, we, the Board of Commissioners of the City of Trenton, do hereby certify and send to the Honorable the justices of the Supreme Court within mentioned, the resolution passed May 7, 1920, appropriating the sum of Fifty-eight Hundred Dollars ($5800), and providing for its payment to a pension fund created by an act of the Legislature of the State
10 of New Jersey, approved April 15, 1920, being Chapter 160, of the Laws of 1920, whereof mention is within made, with all things touching the same, as fully as before us they remain.

In witness whereof we have hereunto caused this return to be signed by the President of the Board, the corporate seal of the City of Trenton to be affixed and attested by the City Clerk this 12th day of May, 1920.

20

THE BOARD OF COMMISSIONERS OF THE CITY OF TRENTON.

[L. S.] By FRED'K W. DONNELLY,
President.

Attest:
LEON D. HIRSCH,
City Clerk.

30

TRENTON, N. J., May 7, 1920.

A regular meeting of the City Commissioners was held on the above date, the following members being present: Messrs. Donnelly, Prest.; Fell, Lee, Page, LaBarre—5.

The following resolution was introduced by Mr. Lee:

WHEREAS, The Act of April 15, 1920, being Chapter 160 of the Laws of 1920, provides, among other things, that the municipality shall

pay "yearly an amount equal to four per centum of the total salaries paid to the members of the police and fire departments" into a fund set up for the purpose of paying pensions to the members of such departments; and

WHEREAS, A sum equal to two per centum only was appropriated at the time the budget for the present fiscal year was made up, pursuant to the statute as the same existed at that time; and 10

WHEREAS, This Board is advised that the provision of the Act, requiring the payment of a sum equal to four per centum yearly of the total salaries paid to the members of such departments, is mandatory; and

WHEREAS, The City is "without funds to meet the necessities and conditions created" by said Act of April 15, 1920; and

WHEREAS, It is necessary to appropriate and 20 raise the sum of Fifty-eight Hundred Dollars ($5800) to meet the necessities and conditions created as aforesaid; therefore

Resolved, That the sum of Fifty-eight Hundred Dollars ($5800) be and the same is hereby appropriated to meet the necessities and conditions created by said Act of April 15, 1920; and be it further

Resolved, That the Director of Revenue and 30 Finance be and he is hereby authorized and directed to issue "emergency notes" in an amount not exceeding said sum of Fifty-eight Hundred Dollars ($5800) for the purpose aforesaid, pursuant to subdivision (e) of section 22 of Chapter 152 of the Laws of 1917 as amended by Chapter 178 of the Laws of 1919; and be it further

Resolved, That the amount of all notes issued under the authority of this resolution shall be placed in the tax levy of the year next ensuing

and retired on or before the 31st day of December of such year.

EDWARD W. LEE,
[L. S.] G. W. PAGE,
G. B. LABARRE.

Adopted by the following votes: Messrs. Donnelly, Prest.; Fell, LaBarre, Lee, Page—5.

LEON D. HIRSCH
10 *City Clerk.*

NEW JERSEY SUPREME COURT.

FREDERIC L. HULME,
Prosecutor,
vs.
FRED'K W. DONNELLY ET AL.,
20 BOARD OF COMMISSIONERS OF THE CITY OF TRENTON,
Defendants.
On Certiorari.

REASONS.

(*Filed May 22, 1920.*)

The prosecutor hereby assigns the following reasons for annulling the resolution passed by the Board of Commissioners of the city of Trenton on May 7, 30 1920:

1. That the act of April 15, 1920, being Chapter 160 of the Laws of 1920, is unconstitutional inasmuch as the true object of that statute is not expressed in the title.

2. The statute is a special law and not a general one, in violation of the mandate of the Constitution in such case made and provided.

3. The statute is unconstitutional in that on certain municipalities of this State it confers the privilege of referendum or adoption of its provisions, and in other municipalities it is mandatory legislation without any

adoption of its provisions by them, and in those municipalities in which it became mandatory, upon its passage, it authorizes in some, but not in all, pensions and retirement.

4. That the act embraces both police and fire matters, which are not related to each other, and is, therefore, in violation of paragraph 4, of section 7, of Article 4, of the Constitution.

5. It is not within the power of the Legislature to make the act of April 15, 1920, effective immediately in municipalities which have set up a pension system and make its operation optional in municipalities which have not. 10

6. The act is in divers other respects unconstitutional, null and void.

CHARLES E. BIRD,
Attorney for Prosecutor.

NEW JERSEY SUPREME COURT. 20

FREDERIC L. HULME,
Prosecutor,
vs.
FRED'K W. DONNELLY ET AL.,
BOARD OF COMMISSIONERS
OF THE CITY OF TRENTON,
Defendants.

On Certiorari.
Facts Admitted.

30

(*Filed May 22, 1920.*)

It is hereby stipulated and agreed that the following facts, respectively, hereunder specified, be admitted on the argument of the writ of certiorari issued in this case with the same force and effect as if due proof thereof had been made by depositions taken on notice:

1. Frederic L. Hulme, the prosecutor in the above-entitled cause, is a resident and taxpayer of the city of Trenton, N. J.

2. That Chapter 221 of the Laws of 1911 (the Commission Government Act) became operative in the city of Trenton on June 20, 1911.

3. That Chapter CCL of the Laws of 1885 entitled "An act to remove the fire and police departments in cities of this State from political control," approved May 2, 1885, was adopted by the legal voters of the city of Trenton at an election held on the 8th day of April, 1889.

10 4. A police pension fund was set up in the city of Trenton on June 11, 1902, under the act of May 2, 1885, being Chapter CCL of the Laws of 1885, and a supplement to said act approved April 3, 1902, being Chapter 165 of the Laws of 1902.

5. A paid firemen's pension fund was set up in the said city of Trenton, under the authority of Chapter 65 of the Laws of 1905, on May 19, 1905.

6. At a regular meeting of the Board of Commissioners held on May 7, 1920, five commissioners being present, the following resolution was introduced,
20 read and passed:

"WHEREAS, The act of April 15, 1920, being Chapter 160 of the Laws of 1920, provides, among other things, that the municipality shall pay 'yearly an amount equal to four per centum of the total salaries paid to the members of the police and fire departments' into a fund set up for the purpose of paying pensions to the members of such departments; and

30 "WHEREAS, A sum equal to two per centum only was appropriated at the time the budget for the present fiscal year was made up, pursuant to the statute as the same existed at that time; and

"WHEREAS, This Board is advised that the provision of the act, requiring the payment of a sum equal to four per centum yearly of the total salaries paid to the members of such departments, is mandatory; and

"WHEREAS, The city is 'without funds to meet the necessities and conditions created' by said act of April 15, 1920; and

"WHEREAS, It is necessary to appropriate and raise the sum of fifty-eight hundred dollars ($5800) to meet the necessities and conditions created as aforesaid; therefore,

"Resolved, That the sum of fifty-eight hundred dollars ($5800) be and the same is hereby appropriated to meet the necessities and conditions created by said act of April 15, 1920; and be it further

"Resolved, That the Director of Revenue and Finance be and he is hereby authorized and directed to issue 'emergency notes' in an amount not exceeding said sum of fifty-eight hundred dollars ($5800) for the purpose aforesaid, pursuant to subdivision (e) of Section 22 of Chapter 152 of the Laws of 1917, as amended by Chapter 178 of the Laws of 1919; and be it further

"Resolved, That the amount of all notes issued under the authority of this resolution shall be placed in the tax levy of the year next ensuing and retired on or before the 31st day of December of such year.

EDWARD W. LEE,
G. W. PAGE,
G. B. LABARRE,"

Adopted by the following votes: Donnelly, Fell, LaBarre, Lee, Page—5.

7. That funds for the benefit of policemen and firemen have been set up in the following cities, under authority of the following acts:

City.		Statute.	Manner of Adoption.
Perth Amboy—			
Police Pension	Fund.	Ch. 72, P. L. 1911.	By governing body.
Firemen's "	"	None.	None.
Asbury Park—			
Police Pension	Fund.	Ch. 299, P. L. 1906.	By electors.
Firemen's "	"	None.	None.
Plainfield—			
Police Pension	Fund.	Ch. 72, P. L. 1911.	By governing body.
Firemen's "	"	Ch. 65, P. L. 1905.	By incorporation.
Orange—			
Police Pension	Fund.	Ch. 299, P. L. 1906.	By electors.
Firemen's "	"	None.	None.
Millville—			"
Police Pension	Fund.	None.	"
Firemen's "	"	"	
New Brunswick—			
Police Pension	Fund.	Ch. 72, P. L. 1911.	By governing body.
Firemen's "	"	Ch. 65, P. L. 1905.	By incorporation.
Hoboken—			
Police Pension	Fund.	Ch. 72, P. L. 1911.	By governing body.
Firemen's "	"	Ch. 65, P. L. 1905.	By incorporation.
Newark—			
Police Pension	Fund.	Ch. 142, P. L. 1914.	None.
Firemen's "	"	Ch. 270, P. L. 1902.	"
Jersey City—			
Police Pension	Fund.	Ch. 70, P. L. 1887.	By electors.
Police Pension	Fund.	Ch. 413, P. L. 1915.	None.
Firemen's "	"	Ch. 270, P. L. 1902.	"
Elizabeth—			
Police Pension	Fund.	Ch. 299, P. L. 1906.	By electors.
Firemen's "	"	Ch. 65, P. L. 1905.	By incorporation.
Bayonne—			
Police Pension	Fund.	Ch. 72, P. L. 1911.	By governing body.
Atlantic City—			
Firemen's "	"	Ch. 65, P. L. 1905.	By incorporation.
Burlington—			
Police Pension	Fund.	None.	None.
Firemen's "	"	"	"

CHARLES E. BIRD,
Attorney for Prosecutor.

HENRY M. HARTMANN,
Attorney for Defendants.

Dated Trenton, N. J., May 24, 1920.

Mellor Press, Printers, Trenton, N. J.

New Jersey Court of Errors and Appeals

FREDERIC L. HULME, *Prosecutor-Appellant,* *vs.*	On Appeal.
FRED'K W. DONNELLY ET ALS., BOARD OF COMMISSIONERS OF THE CITY OF TRENTON, *Defendants-Appellees.*	On Certiorari.

BRIEF FOR PROSECUTOR-APPELLANT.

The fundamental question is: Is the Act of the Legislature of 1920, known as "The police and firemen's pension and retirement act," Chapter 160, p. 324, Laws of 1920, constitutional? The act in question was strongly opposed by the City of Trenton at the time the act was passed by the Legislature, and this suit is to determine whether or not the statute is operative in the City of Trenton.

DISCUSSION OF THE STATUTE.

The act is entitled:

> "An act providing for the retirement of policemen and firemen of the police and fire departments in municipalities of this state, including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired police and firemen and members of the police and fire departments, and the widows, children and sole dependent parents of deceased members of said departments."

The statute makes provision as follows:

Section 1, provides that in all municipalities any policeman or fireman, or members of the police or fire departments, including police officers having supervision or regulation of traffic upon county roads, who shall have honorably served in such police or fire departments for twenty years and attained the age of fifty years, shall upon his own application be retired on half pay, and any member of any police or fire department who shall have honorably served for a period of twenty years and attained the age of sixty-five years shall be retired on half pay. The widow of every retired member shall, as long as she remains a widow, receive a pension equivalent to one-half pay at the time of his retirement. All such retirements are to be made and pensions to be allowed by the pension commission created by the act.

Section 2 provides for the retirement on account of disability in the performance of duty as a member of the police or fire departments.

Section 3 is concerned with the payment to dependents.

Section 4 provides for the creation of the fund.

Section 5 provides for the creation of the commission. This provides that the commission shall be composed of the Mayor, or other chief executive of the municipality, the chief financial officer of the municipality, one policeman of the police department and one fireman of the fire department and the fifth member shall be a citizen not holding office under the municipality. *It is further provided that in municipalities in which there is not now in effect a fund for the retirement or pensioning of both firemen and policemen, but one or the other, there shall be established a pension commission of three members consisting of the Mayor, a member of the Department having the fund and a citizen.*

Section 9 provides that this act shall take effect immediately in every municipality in which a fund for the retirement or pensioning of policemen or firemen, or either, is now in effect, but shall not take

effect in any other municipality until its adoption by a majority of the voters at a general or special election.

Section 12 provides for the repeal of inconsistent legislation.

Statutes Relating to Police and Fire Departments.

The municipal act of 1917, Article XVI, Chapter 152, p. 359, provides for the establishment of a police department in municipalities. Fire departments may be created under Article XVII, p. 362 of the same act.

Firemen's Pensions.

Firemen's pensions are permissible under "An act concerning fire departments of this state and to provide for the retirement of firemen and employees therein." (P. L. 1888 p. 238, C. S. 2382). This act permits the Board of Fire Commissioners to retire from service any officer or man in such department unable to perform duties upon a pension. These pensions are to be provided for by taxation.

Also under an act entitled, "An act providing for the pensioning of firemen in certain cities of this State." (P. L. 1893, p. 430, C. S. 2396). This act directs cities having a paid fire department to retire upon half pay any fireman receiving permanent disability incurred in the service.

Also under an act entitled, "An act providing for the pensioning of firemen in certain cities of this State." (P. L. 1897, p. 263, C. S. 2396). This act provides that in all cities having a paid fire department it shall be lawful to retire from service any incapacitated officer, when such incapacity shall be the result of injury received or sickness contracted while on duty. It also provides that any one who is employed therein who is fatally injured that his widow or dependent parents, or child or children shall receive a pension.

Pensions are also allowable under two acts which are the principal acts in this state; first, "An act con-

cerning paid fire departments in certain municipalities of this state and for the relief of members thereof, their widows, dependent parents and children," (P. L. 1905, p. 114, C. S. 2448, and second "An act concerning paid fire departments in cities of the first class," (P. L. 1902, p. 793, C. S. 2454). These acts permit the members of the fire deparements to associate themselves together as a body corporate for the purpose of providing and maintaining a fund to pension firemen, their widows, dependent parents and children.

The pension fund is made up by premiums from insurance companies, by fines, penalties and forfeitures, rewards, fees, gifts and assessments on members, but no municipal support from taxation is provided for.

Police Pensions.

"An act to provide for the payment of pensions to the families of policemen, who die or are permanently disabled in the discharge of their duties" (C. S. 2463). This statute permits any municipality to pension any police officer or his widow and children, who dies of wounds received in the discharge of his duties.

"An act providing for the pensioning of police officers and policemen in cities and towns of this state, and regulating the method by which the same may be accepted and become operative therein," provides that any member of the police force attaining the age of sixty-five, and who shall have honorably served for twenty-five years may, upon application, be retired on half pay. This Act is to be accepted by the legal voters of any city or town before it becomes operative. It also provides that a tax levy equal to at least four per centum of their salary, in the aggregate, shall form a fund to pay the pensions.

"An act to authorize cities to provide for the pensioning of members of the police force." (C. S. 2470, P. L. 1885 p. 183). It is provided in Section 89, C. S. 2346, that in all cities in which the Act entitled, "An act to remove the police and fire departments in cities of this state from political control," is

or may hereafter become operative there shall be established a police pension or retirement fund. "An act providing for the pensioning of police officers and policemen in certain municipalities of this State." (P. L. 1911, 104 Supp. C. S. 653). "An act to provide for the establishment, management and distribution of a pension fund in cities of the first class for the relief of widows, children and dependent parents of policemen and retired policemen therein." (P. L. 1915, p. 872, Supp. C. S. 662). See also Laws of 1915, p. 417.

Reasons for Setting Aside the Act.

1. That the object of the act is not expressed in the title.

2. That the statute is a special law in violation of the mandate of the constitution.

3. The act is unconstitutional because it confers on certain municipalities the privilege of referendum on adoption of its provisions, and in other municipalities it became mandatory without adoption by the municipalities of its provisions, and that in these municipalities in which it became operative it authorized in some, but not in all, pensions and retirements.

4. That the act embraces matters which are not related to each other, and is in violation of paragraph 4 of Section 7 of our constitution.

The statute is a special law in violation of the constitution. The important sections 5 and 9 deprive the act of generality. The fifth section provides that in municipalities in which there is not now in effect a fund for both departments, but for one department, the Commission shall be composed of three members, one of whom acts for the Department having the fund. The ninth section provides that the act shall go at once into effect in every municipality having either a firemen's pension and retirement fund or a policemen's pension or retirement fund.

Sections 1, 2, 3 and 4 plainly indicate that a municipality which operates under this statute shall provide pensions and funds for retirement of firemen and policemen. The statute creates this condition of

affairs; that those municipalities which have only one fund for pensions are to be governed by the provisions of this act as to the members of the department having the fund, but that in the future no municipality can establish pensions for one department without contemporaneously establishing pensions and retirements for the other department. In such a juncture the similarity of conditions in the two municipalities is disregarded, and the diversity is permitted which allows one municipality, while operating under this act, to maintain one fund, while the other municipality, likewise operating under this act, must have both funds and both pensions.

The object of the statute manifests plainly that police pensions and retirements, and the firemen's pensions and retirements are to be granted without any discrimination between the two departments, and the statute was enacted to consummate that object. This differentiates the statute under discussion from that of Lohan vs. Thompson, 88 N. J. L., 40, which is relied upon by the Supreme Court for sustaining the act. Every county which had adopted the Freeholders' Act had exactly the same obligations as those which subsequently adopted it. There would be no diversity between counties which had adopted the act, and those which afterwards adopted it. The opposite condition confronts us in the present statute. Some municipalities are allowed to maintain a fund and pensions for one Department, while other municipalities, governed by this act, would be coerced into establishing pensions and retirements for both departments. This is the vital difference between the two statutes. This statute does not bring all municipalities into harmony, but diversities continue to exist and flourish as before.

In the Lohan vs. Thompson case Mr. Justice Swayze said, "separate statutes might have been passed, bringing the several counties into harmony, and that the legislature had passed one statute instead of several to accomplish that purpose." If several statutes had been passed to carry out what the legis-

lature has ordained in this statute, they would be thus drawn.

(a) Certain municipalities which had established pensions for one department would be allowed to continue such pensions, and would be governed pro tanto by the provisions of this act. (b) A second statute would provide that municipalities which had both funds would be governed by the provisions that are in this act, and (c) the third statute would provide that hereafter all municipalities must establish pension funds for both departments without any discrimination between firemen and policemen.

We submit the unconstitutionality would consist in the fact that the legislature arbitrarily permitted some municipalities to continue with only one pension fund, while all others must have both.

We submit that a statute which contains mandatory and referendum features does not create generality in the statute and is obnoxious to the constitution. We further submit that the title is likewise defective. Mr. Justice Swayze, studying the title of the act, understood it to provide for pensions for both firemen and policemen in all municipalities which had either pension fund at the time of the adoption of the act, and that all municipalities which thereafter should create pensions should do so for both departments. Thus all municipalities would be in entire harmony in respect to the necessity, as well as the duty of treating the firemen and policemen as equally entitled to the municipal bounty, but he overlooked the specializing effects of Sections 5 and 9.

We observe that Mr. Hartmann's brief suggests that the prior pension acts, which create a pension fund, have been impliedly repealed by this act, and particularly by the section thereof which repeals all prior and inconsistent legislation.

We have examined many referendum statutes, and beginning with the statute discussed in re Cleveland, and cited in this brief, down to the present one, inconsistent legislation is expressly repealed in all. If these prior statutes are thus impliedly repealed we fail to see how the great body of municipal legisla-

tion, which is entirely outside of the referendum statutes, and which are contrary to its provisions, are not swept away, although they may omit to adopt the referendum statute.

We submit that the express repealer of inconsistent legislation can only operate in those municipalities wherein the statute is operated, and not elsewhere. If our idea of the referendum statute is correct, then the several statutes which permitted municipalities to create one or both funds, according to the favor of a local plebiscite, are still within the adopting power of municipalities, and thus the effect of this statute, which we are discussing, is to increase diverse conditions rather than removing them.

Appropo of the statutory provision that municipalities having the funds at the time of the adoption of the act shall be governed thereby, and particularly to that part of the provision which permits some municipalities to continue with one pension fund. DeHart vs. Atlantic City, 63 N. J. L., 223 at 224, states our objection to the statute thus: "It is observed that the provision of the statute complained of is made applicable to a limited class, cities having twenty thousand or less inhabitants adopting the enactment within three months. After the expiration of the three months the law remains, but applicable only to those cities of the class indicated that have adopted it. Its benefit is denied to then existing cities whose necessity may at any time after the three months have demanded, or may hereafter demand, a District Court, and as well to all cities that may have come into being after the expiration of the three months' limitation or may hereafter come into being. The effect of the limitation is a restriction of the class to which the law may be applied."

In re Fagan, Mayor, etc., 41 Vroom, 341 at 346, the Court said, "the provisions of the supplement of 1894, being limited to those cities which were in the first class at the time of the passage of the act, and not being applicable to those cities which might thereafter come into the class, must be declared to be un-

constitutional under the rule laid down by the Court of Errors in the case of DeHart vs. Atlantic City above cited."

In *Paul* vs. *Gloucester,* 21 *Vroom,* 585 *at* 607, Mr. Justice Van Syckel said, "local government signifies government by the several parts of the State, each part for itself. The question remains to be considered whether this legislation is special and local, and therefore in contravention of the constitutional provision that 'the legislature shall not pass private, local or special laws regulating the internal affairs of towns and counties.' The argument is that this law produces different results in different counties, dependent upon the vote for or against the sale of liquors, and that thus the Legislature, by the indirect mode of submitting this matter to the popular vote, accomplishes what it could not do by direct legislation, viz., it makes the law in one county to differ from that in another. * * * The error lies in charging to the law the diversity which is attributable only to the different modes in which the various communities elect to govern themselves under the delegated powers."

"These laws authorizing the people to govern themselves are enabling acts—acts which enable localities to govern themselves according to their own will." * * *

"The delegation of this police power necessarily implies the right to each political district to regulate it in its own way, or to prohibit it. If the law must be absolute, unconditional and peremptory—if it must hold all to a like use of it—it is not a delegation of any authority."

"The very object of delegating these powers is to enable the local governments to make such diverse laws as they may deem expedient."

"The inhibition of the constitution is not intended to secure uniformity in the exercise of delegated police powers, *but to forbid the passing of a law vesting in one town or county a power of local government not granted to another. If one town or county was*

excepted from the operation of this law, it would be special and local. Under it, one county or town has neither greater nor less power than every other, nor does such power differ in any respect."

"The quality of uniformity of result cannot co-exist with the right of self-government in various sections of the State." We claim that under this decision the Act in question is unconstitutional. Every municipality which was not at the time of the passing of this Act either police or fire pension funds has the right to determine the municipal expediency of establishing such funds, while those municipalities which happen to have one or the other are compelled to provide both. This vests in some municipalities the power of deciding which is withheld from others.

Mr. Justice VanSyckel in the case *In re Cleveland* vs. *Mayor,* 52 *N. J. L.* 188 *at* 191, said, "The grant of powers of local government inevitably leads to diversity. The object of delegating powers is to enable local governments to make such divers laws as they may deem expedient. The grant of such powers implies that diversity is requisite. If uniformity was to be preserved, the Legislature would establish a uniform and inflexible code for all localities, leaving nothing optional. If we hold that diversity arises out of the use or application of the legislative Act, is destrictive of its validity, we must affirm that the constitution of our State, in its present form, absolutely forbids the delegation of powers of local government."

"Uniformity in results cannot co-exist with the right of local self-government. * * * *Uniformity exacted by the constitutional mandate must be sought for, not in the results which flow from the free, unhampered exercise of the granted power of local government, but in the fact that every locality is afforded a like right to adopt and exercise, in its own way, the same powers which are bestowed upon every other like political body. To the one no privilege must be offered for acceptance which is not extended to the other.* The authority given must be the same; it may

be executed in a different way, or in the same way, at the option of the recipient. That is the uniformity to which the judicial declarations in the adjudged cases in this State must be referred. One of the conspicuous evils at which this constitutional amendment was aimed, was, in my judgment, this: that prior to the amendment a few persons could go before the Legislature and secure the passage of a special law to promote their own purposes, which might be obnoxious to the body of citizens. In such event, the only remedy was by an appeal to a subsequent Legislature, and that might be too late to wholly repair the mischief. Such enactments are now forestalled by the fact that they cannot be made applicable without being submitted to the approval of the entire body of voters. In this way the people of every city are left free to select the mode in which they will regulate and conduct their local affairs, and it is this which impresses such legislation with the character of general, and not special legislation. Gauged by this standard, there is no infirmity in the legislation which is the subject of this controversy. It applies to the entire class; there is no exception. It is held out to the free acceptance of all, and is capable of being accepted or rejected by every city in the State."

"In determining whether an act is general or special, we must regard the time of its enactment. If it applies to all cities then in existence, it seems to be a contradiction, in terms, to say that it is special. To be special, it must exclude some; if it excludes none, and expressly embraces all, it must be general."

And in the same case, 51 *N. J. L.* 319 *at* 322 Chief Justice Beasley said in the Supreme Court, "And the hypothesis has in no instance been adopted or countenanced, that when a franchise or privilege has been tendered by the Legislature to every locality, such tender is special or local because it may not be universally accepted. There is no prohibition in the Constitution against the enactment of the general law which may, by possibility, produce local results. If we were to accept the doctrine that the effect that may

result from a statute is the test of its constitutionality, it would appear to be impracticable to offer privileges to these municipalities, and every law to affect them would of necessity have to be a mandatory regulation. * * * Under the rule as claimed it would be difficult to justify the grant to these municipalities of the prerogative of local legislation, as the obvious result is that no two localities would be subject to the same code of local laws."

Mr. Justice Trenchard said in the *Del. Riv. Trans. Co.* vs. *Trenton,* 68 *N. J. L.* 48 *at* 51, "The generality in a constitutional sense of the Walsh Act rested upon the clause which permitted all of a class to vote upon the adoption of the act.

"While the right of all of a class to adopt the Walsh Act rendered that statute general, the vote upon the question of the adoption, if favorable, did not bring into existence a group of municipalities which was general for all purposes of legislation."

This case was affirmed in the Court of Appeals on the opinion of Mr. Justice Trenchard (86 *N. J. L.* 679).

In *Wanser* vs. *Hoos,* 60 *N. J. L.* 482 *at* 535, Mr. Justice Depue said, "From the earliest history of this State it has been the policy to keep the election of township, town and city officers separate from the election of State and county officers." He then determined that the act in question in that case was one which related to the public policy of the State in respect to municipalities, as it had been evinced through the statutory history of the State, and reaching the conclusion that discriminations were made in respect to municipalities, which were not based on any circumstantial reason, declared the act unconstitutional.

We submit that the act should be declared unconstitutional.

Respectfully submitted,

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AARON V. DAWES,

Counsel for Prosecutor-Appellant.

Mellor Press, Printers, Trenton, N. J.

New Jersey Court of Errors and Appeals

FREDERIC L. HULME,
Prosecutor-Appellant,

vs.

FRED'K W. DONNELLY ET AL.,
BOARD OF COMMISSIONERS
OF THE CITY OF TRENTON,
Defendants-Appellees.

On Appeal.

On Certiorari.

BRIEF FOR RESPONDENTS DEFENDANTS-APPELLEES.

This case raises the question of the constitutionality of an Act entitled *"An act providing for the retirement of policemen and firemen of the police and fire departments in municipalities of this State, including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired policemen and firemen and members of the police and fire departments, and the widows, children and sole dependent parents of deceased members of said departments,"* being Chapter 160 of the Laws of 1920, page 324.

ARGUMENT.

I.

The Title of the Act Expresses Its Object.

The constitutional provision is that "Every law shall embrace but one object, and that shall be expressed in its title." It is true that the Act in its title refers to police and fire pensions, but in the body of the Act makes frequent reference to police and fire pension "funds." It is impossible however to see how the general object of the law could have been more aptly expressed. All of the authorities are agreed that the purpose of the constitutional provision is to require *the title of a bill to be such as will inform the public and the members of the Legislature of the object of the enactment, and that this purpose is accomplished when the title fairly indicates the general object, although it does not indicate the means or method of attaining it.*

Mr. Justice Dixon in speaking for the Supreme Court in *Bumstead* vs. *Govern,* 1 *Atl.* 835, said:

> "The constitutional requirement that the object of every law shall be expressed in its title is satisfied when the title fairly indicates the general object of the statute, although it does not indicate the means or method of attaining that object."

II.

The Statute is General and not a Special One and Does not Violate Our Constitution.

This Act provides a new and complete legislative scheme covering the entire subject of police and fire pension "funds" in this State. Its purpose was to afford to municipalities a sounder and more scientific

financial basis for the establishment of these "funds" in municipalities of this State, and impliedly repeals or supersedes all existing legislation relating thereto. In paragraph seven it is expressly declared *that all boards or bodies having control of existing pension "funds" are hereby vacated and all pension "funds" in their hands, or under their control, shall come under the control and regulation of the new Act.* The repealer contained in paragraph 12 read in conjunction with the foregoing provision cannot help but bring one to the conclusion that it supersedes all other legislation relating to police and fire pensions. It must be remembered that while this legislation is compulsory upon every municipality having either a "fund" for the retirement or pensioning of policemen or firemen, or both, it affords to every other municipality not now having such a "fund" the privilege of adopting its provisions by submitting the same to its electors as provided in section 9.

In speaking of the legislative intent to supersede and abrogate Acts of the Legislature inconsistent with a later statute dealing with the subject matter of such previous laws, Chancellor Magie, for the Court of Errors and Appeals in *Smith* vs. *Borough of Hightstown,* 60 *Atl.* 393, most tersely and aptly said:

> "It is the settled doctrine of our courts that general laws passed in compliance with the constitutional mandate are to be construed as repealing inconsistent provisions of previous local or special laws, whether they contain an express repealer or not, and, if they deal with the subject matter of such previous laws, a legislative intent is disclosed to supersede and abrogate the latter."

In the light of the doctrine annunciated in this case it would be futile to contend that the Act in question did not repeal or abrogate all existing laws pertaining to police and fire pensions in this State.

Lohan vs. *Thompson,* 95 *Atl.* 447, is the only case in this State involving all of the questions which are

raised concerning the constitutionality of this Act. In that case the court dealt with the constitutionality of an Act, Chapter 355 of the Laws of 1912, commonly known as an Act relative to boards of freeholders of this State. Section 7 of the 1912 Act provided that none of its provisions should take effect in any county until the Act had been adopted by the voters, except nothing in the Act should be construed to require a reorganization of the board of freeholders (1) in counties which prior to the Act of 1912 adopted the provisions of the Act of 1902 and have effected a reorganization of the Board; and (2) in counties in which there had been held an election for the acceptance or rejection of the Act of 1902 as originally passed or as amended resulting in acceptance. In counties where the reorganization had already been effected, it was enacted that the members of the Boards should remain in office until the expiration of the terms for which they were elected, and the Boards should be subject to and governed by the provisions of the Act of 1912. In counties where the legislation had been accepted but no election of the Freeholders had, it was provided that the number of members should be as required in the Act of 1912, and that they should be elected at the next general election, and the Boards should be governed by the provisions of the Act of 1912.

Mr. Justice Swayze in rendering the opinion of the Supreme Court in this case said among other things:

> "We are brought face to face with the question whether the legislature can pass an act which creates two classes of counties: (1) counties which may adopt the Act of 1912 or reject it; (2) counties which are subject to other provisions of the Act without the privilege of accepting or rejecting. That the applicability of a statute the adoption of which is equally open to all may be made to depend on the result of a referendum to the voters is too well settled to require a discussion. It necessarily follows that

two classes may arise—one composed of those who accept the legislation; the other composed of those who do not. These two classes existed before the Act of 1912 was passed and no one questioned the validity of the classification. It is equally clear that the Legislature might alter, amend or modify the old statute without submitting the changes to a new vote of the people. City charters which have been submitted to a referendum have been frequently amended thereafter by the Legislature alone. To hold otherwise would be to hold that a referendum tied the hands of the Legislature. The important provisions of Section 9 might properly have been made the subject of a distinct Act applicable to all counties that had adopted the Act of 1902. If the provisions might properly have been made the subject of a distinct Act, they are not bad because inserted in an Act dealing with the general subject of the organization of Boards of Freeholders. From the fact that counties that had already adopted the Act of 1902 formed a distinct class it logically follows that counties that had not adopted the Act of 1902 also formed a distinct class, and naturally might require legislation that would be inappropriate for the others which had already adopted the form of Government provided in 1902."

Chapter 160 of the Laws of 1920, the Act in question, bears an exact likeness to the Freeholders' Act of 1912, construed in *Lohan* vs. *Thompson, in that it is immediately applicable to all municipalities which have established one or both "funds" prior to its passage, and affords to all other municipalities the right to adopt its provisions by a vote of the people, to the extent of adopting one or both "funds" and also gives the right to municipalities having one "fund" to establish both "funds."* The important provisions of this Act, too, might properly have been

made the subject of a distinct Act applicable to all municipalities that had established pension "funds" in this State. Those municipalities formed a natural class. If the provisions might properly have been made the subject of a distinct Act, they are not bad because inserted in an Act dealing with the general subject of police and fire pension "funds." This question was decided in the Lohan case. From the fact that municipalities that had already set up one or both pension "funds" under existing legislation formed a distinct class, it logically follows that municipalities that had not set up either or both of such "funds" also formed a distinct class. *The Legislature sought to give both classes the advantage or disadvantage of a referendum* and in case of an affirmative vote to have both classes governed by the same law. All municipalities that have established police or fire pension "funds" or both are now subject to the provisions of the Act of 1920, if valid; but so also are all other municipalities that choose to accept it, *and the choice is open to all.* The result is uniformity except so far as diversity may be produced by popular vote or failure to vote; and diversity so produced is not the result of the legislation, but of the popular action or failure to act.

An effort to distinguish the case at bar from Lohan vs. Thompson is indeed futile, although counsel has made such an endeavor in arguing that a municipality which has established one "fund" is coerced by the Act of 1920 into the establishment of both. There can be no merit in this argument because *paragraph 5 provides for a commission of three members where the municipality has but one "fund" and a commission of five members where it has both "funds."* This clearly indicates that there was no intention upon the part of the Legislature to force greater burdens upon municipalities having one "fund," or no "fund" unless the people so decided by a vote. *It is also true that municipalities having neither "fund" may set up one or both "funds" according as the people shall deem expedient.*

It is insisted by counsel for the relator that municipalities voting at a referendum after the passage of the 1920 Act and to determine whether they shall adopt its provisions, would have the opportunity to reject certain provisions of that Act which were not in the previous fire and police pension Acts, while municipalities that had accepted the earlier legislation would have those provisions thrust upon them by the Legislature. If the constitution required that all municipalities should be treated alike this contention would be forceful. This, however, is not the case. On the contrary, the power of the Legislature to control its agencies is well settled. All that our Constitution requires is general laws, and, as has already been decided, legislation which removes differences between the governmental powers of different municipalities is constitutional, though it affect one municapility only. It is, therefore, clear that the Legislature in passing the Act did not exceed its constitutional power.

III.

The Act Embraces But One Object.

The act in question deals with but one object and that object is *pension "funds."* The contention that the Legislature over-stepped its constitutional limitations when it passed this Act because it deals with two objects which are unrelated is fallacious. One has but to turn to the Acts pertaining to cities of this State to find an analogy of the Law of 1920. Take for instance the Acts providing for terms of office for city officials such as the City Clerk, City Treasurer and City Comptroller. It provides terms of office for a number of such officials, yet the officials are in no wise related to each other so far as duties are concerned. Many of these statutes have been before the courts and have been held to be Constitutional

Acts. The important matter in the 1920 Act is not that it deals with policemen and firemen, but that it deals with "funds" for them and their dependents. However, for the sake of argument, the contention of the relator can be met because the policemen and firemen form a unique class of employees of municipalities in that their employment is obviously hazardous. Surely this relation between the objects of the legislation justified the Legislature in dealing with them in the one act.

"As legislation is the express will of the people through its legislators, courts are loth to declare an Act unconstitutional unless it clearly appears to be so. If there be any doubt as to its constitutionality, or if it will admit of any construction that will save it from condemnation of invalidity, the rule is to sustain its constiutionality." But *Kudlich* vs. *Griffin,* 88 *N. J. L.,* 573.

It is, therefore, respectfully submitted that the Act in question does not offend against the Constitution of our State, and that the judgment of the Supreme Court should be affirmed.

HENRY M. HARTMANN,

Counsel for Appellees and Defendants.

9 NOV 1, 1920

New Jersey Court of Errors and Appeals

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November Term, A. D., 1920.

FREDERICK L. HULME, Prosecutor-Appellant, vs. FRED. W. DONNELLY et als., Commissioners of the City of Trenton, and STATE FIREMEN'S MUTUAL BENEFIT ASSN. (Intervenor), Defendants-Appellees.	On Appeal On Certiorari.

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BRIEF FOR STATE FIREMEN'S MUTUAL BENEFIT ASSOCIATION.

The issue sub judice was originally presented to the Supreme Court on certiorari. It centers in the question of the constitutionality of an act of the Legislature of the State of New Jersey, being Chapter 160 of the Laws of 1920.

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The Supreme Court held the statute to be constitutional and that decision is now before this Court on appeal.

Under the authority of that statute the Commissioners of the City of Trenton adopted a resolution appropriating moneys necessary to the organi-

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zation of the pension fund provided for in the statute.

This resolution rests entirely upon the authority of the statute in question.

The first reason assigned for nullifying the statute is that it is "unconstitutional inasmuch as the true object * * * is not expressed in the title."

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POINT I.

The title of the statute is not defective.

The title is not in violation of Para. 4, Section 7 of Art. 4 of the constitution.

The constitutional requirement is that "every law shall embrace but one object and that shall be expressed in the title."

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The title of the statute in question is:

> "An Act providing for the retirement of policemen and firemen of the police and fire departments in municipalities of this State, including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired policemen and firemen and members of the police and fire departments, and the widows, children and sole dependent parents of deceased members of said departments."

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Under this title the statute makes provision, in addition to the terms of the retirement and pension, for the following:

1. Designation of the sources from which pension fund is to be derived, viz.: deductions from salaries of policemen and firemen; muni-

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cipal taxation; fines and penalties imposed upon members of the police and fire departments; municipal tax levy to meet deficiency.

2. Creation, composition, organization and jurisdiction of a pension commission to execute the provisions of the statute.

3. The vacation of all prior existing pension boards and commissions and the transfer of existing retirement and pension funds to the board and body created under and by virtue of the new statute.

4. For the taking effect of the statute in municipalities in which policemen's or firemen's pension or retirement funds exist; and for the takng effect of the statute in municipalities where such funds do not exist.

The question to which all others under this objection are subordinated is whether or not so much of the first of the foregoing provisions as deals with the matter of taxation constitutes in effect a statutory object requiring statement in the title. If this provision does not render the statute defective, it is respectfully submitted that the others are, with stronger reason, within the scope of the title. It alone will, therefore, be dealt with under this point. Other questions arising out of the provisions above enumerated will be dealt with under their own specific heads.

Is the tax thus provided for cognate to, and has it logical and natural relation with, the purpose and object of the statute as expressed in its title? If so, it has proper place in the statute. An act which provides for the "retirement of policemen and firemen" and for the payment of a pension "to

such retired policemen and firemen" and to the "widows, children and sole dependent parents" thereof has an object which is most vitally dependent upon and related to an accumulation of money. What becomes at once manifest is that the statute thus entitled is contingent in its very operation upon the creation of a fund of public moneys out
10 of which these pensions may be paid.

A recent case dealt with an act of the Legislature of this State "respecting fees." The fees were those to be paid to a public officer for the doing of public business, and the reference bore no allusion whatsoever to his own salary as such officer, nor to that of any of his official subordinates. The statute, nevertheless, contained a provision for a change in the salaries of persons subordinately employed in his office. The Court said:

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> "The salary of the incumbent and the compensation to be paid to his assistants are not foreign to the object expressed in the words, 'An Act respecting the fees of,' etc., for it is expressly declared in the body of the act that these fees are to be paid into the county treasury, there to be kept in a seperate fund and to be applied from time to time to the payment of specified expenses. On the contrary, they are
> 30 manifestly cognate to it, and *therefore were not required to be expressly mentioned in the title.*"

McMahon vs. Riker, 92 N. J. L., 1.

See also Quigley vs. L. V. R. R., 80 N. J. L., 486, and cases cited.

The statute sub judice, it must be admitted, has "one general object," and that the matters contain-
40 ed in the body of the statute, however various they

may be claimed to be, tend to effectuate that object and are related to each other."

Newark vs. Mt. Pleasant Cem. Co., 58 N. J. L., 168.

In the latter case, under the title "An Act to authorize the incorporation of rural cemetery associations and regulate cemeteries," there was legislation "looking to the *exemption from public burdens* of the property of cemetery corporations." The same was held to be in conformity with the constitutional requirement. 10

By way of enlarging upon the reasons given for sustaining the statute, Magie, J., in the latter case, at page 171, says:

"The constitution itself discloses the reason for the restriction on legislation contained in the provision in question. It is because of the influences which might result from the inclusion in one act of matters not properly related to each other, that it requires every law to embrace but one object. 20

"The evil intended to be guarded against was not the inclusion in one act of more than a single matter, but the inclusion therein of matters not properly related among themselves. So by its obvious construction this constitutional provision justifies and permits legislation by one statute, looking toward a single general object, although it contains and enacts various and multiform matters, if those matters are properly related to each other and tend to effectuate the general object. This is the view of the provision in question taken in this court. Payne vs. Mahon, 15 Vr., 213. The same construction has been repeatedly given it in the Supreme Court and in the Court of Chancery." 30 40

And again (same page):

> "It results that when a court is called on to determine whether a statute conforms to this requirement of the constitution the first duty is to scrutinize its provisions to see if they disclose the general object of the legislation. Then, if that objection be one, and the various
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> provisions of the statute *tend* to carry it out, and are not incongruous or improperly related, this requirement will have been complied with."

See Stockton vs. C. R. R. Co., 5 Dick. Chan. Rep. and cases there collected.

As an interesting case in point the court is respectfully referred to Onderdonk vs. Plainfield, 42 N. J. L., 480, in which Knapp, J., says, at page
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483:

> "The object of the law now in question was to provide for laying highways which should run into the two designated towns, situate in different adjoining counties. This purpose is clearly indicated in the title. By reason of certain provisions in the charter of the City of Plainfield, the ordinary means for laying roads crossing county lines, to be found in the general road law, were rendered inapplicable;
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> and no legal method existed under our legislation as it then stood, for attaining that end. It was therefore manifest to all that the object sought could only be gained through the creation of new instrumentalities, and the expression of a purpose of enabling streets to be laid necessarily implied the adoption of new machinery. These were merely incidental to the general object of the act. The leading subject of the statute should be fairly expressed
> 40
> in the title, *but the means or instruments by*

> *which the general purpose is to be attained, or matters merely incidental to it, are not a necessary part of the title.* Sedg. on Stat. Constr., 520 and note."

In Easton & Amboy R. R. Co. vs. C. R. R., 52 N. J. L., 267, the general object of the statute was the appropriation of a tract of land under tide-water for public use, for the purpose of navigation and commerce. Under this statute there was a grant to Jersey City of that part of it next to the City, with the duty to improve the same for a basin, with power to erect wharves and regulate and control the use of such basin and wharves and to charge dockage and wharfage. Though the details of this legislation might fairly be said to have been carried so far as to constitute an object by no means necessarily related to that stated in the title, the court found that the provisions of the statute were not beyond the scope of the title. The court based its ruling upon the finding that these provisions were "designed to carry into execution the legislative purpose."

In this latter case, Depue, J., said (at page 271):

> "The constitution does not prohibit the union in one act of several objects, using that term in a limited sense; the interdict is against the union in one act of such things as have no proper relation to each other. In giving effect to this constitutional provision, the courts give paramount consideration to the general object of the act—the general purpose of the legislative scheme. The general object of the act being ascertained, the power of the legislature is vindicated to include in it provisions of a *multiform character*, designed to carry into execution the legislative purpose, which are not inconsistent with or foreign to the general

> object of the act. The decisions to this effect in our own courts are numerous." (Cases cited.)

In view of the interpretation thus set forth—far more liberal than any required to sustain the constitutionality of the statutory provisions sub judice —it would seem now to stand, indeed without argument, that all of the provisions of Chap. 160 of the Laws of 1920, hereinabove enumerated, do serve the sole and manifest purpose of effectuating the single object of the statute as stated in its title.

It is enough if the title of an act is

> "aptly expressive of its object, if it contain a mention of the subject matter *generally*, together with a succinct indication of the legislation respecting it."

Moreland vs. Christian, 52 N. J. L., 521.

> "The constitutional requirement that the object of every law shall be expressed in its title is satisfied when the title *fairly indicates the general object* of the statute, although it does not indicate the means or method of attaining that object."

Bumsted vs. Govern, 47 N. J. L., 368.

POINT II.

The statute sub judice is not special or local within the meaning of the Constitution.

The next objection to the statute, embracing the second, third and fifth reasons, may for convenience in presentation, be epitomized in the following form:

That the statute is unconstitutional because it is a special law, seeking to regulate the internal affairs of towns and counties; that it is special because in certain municipalities of this state (those having no firemen's or policemen's pension fund), it is not, by its own terms, to become applicable until it has been adopted by referendum, while in other municipalities (those having a firemen's or a policemen's pension fund), its provisions become at once mandatory.

At the outset, of course, it must be admitted that the statute does seek to regulate the internal affairs of towns within the meaning of the constitution. The nub of this question is, however, as to whether or not the distinction between the method of causing the statute to apply to cities already having a policemen's or firemen's pension fund and the method of causing it to apply to those municipalities having neither of such funds involves defect sufficient to be held a violation of the constitution. In other words, does the legislature, by the distinction above indicated, create of cities two classes without adequate legal or natural basis for such classification?

We would first call the court's attention to what might be called a case of striking analogy:

Lohan vs. Thompson, 88 N. J. L., 40.

In that case, Swayze, J., who speaks for the court, takes occasion to state that certain points urged by counsel in the oral argument against the statute then before the court, which at the time of their statement were cogent to his mind became upon reflection dissipated of their strength (page 42). Objections identical to those opposed in the Lohan Case may, and doubtless will, be presented by the prosecutor in the present case. And, we think, upon a like reflection will be given like effect.

In the Lohan Case prosecutor's contention was based upon an alleged illegal classification of counties resulting from a distinction made in Sections 7 and 9 of Chapter 355 of the Laws of 1912. The distinction was that that statute (as provided in Sec. 7), shall become operative in counties generally only upon its adoption by referendum; it being provided, however (by Section 9), that "nothing in the act shall be construed to require a reorganization of the board of chosen freeholders of any county in accordance with the provisions of this act when such county has, prior to the passage of this act, adopted the provision of" Chap. 34, Laws of 1902 * * *"and which has effected a reorganization of its board of chosen freeholders in pursuance thereof, and in such counties the members of such reorganized board of freeholders shall continue in office until the expiration of the terms for which they were elected, and such board so reorganized shall hereafter be subject to and be governed by the provisions of this act."

The 1912 statute in the Lohan Case, by what might, with as great force in that case as in this, be called mere arbitrary designation, created two classes of counties: one comprising those which had prior to the passage of the 1912 act adopted the act of 1902; the other comprising those which had not prior to the passage of the 1912 act adopted the act of 1902.

It is our conception now that the strongest answer which can be made against us on this point is that the adoption of the two statutes dealt with in the Lohan Case was required to be by like method—referendum; and that in the Lohan Case the court was not confronted, as in the case sub judice, by a statute which provides for its immediate application without referendum in cities which had taken a prior course on the subject in question (some by referendum and some by direct gov-

ernmental action); while in cities which had not taken such prior course it is made applicable only upon its adoption by referendum in those cities; that in the Lohan Case, as regards cities having adopted by referendum the statute of 1902, it was not a defect in the statute that it should not provide for a like adoption by those cities of the statute of 1912. Such a contention may be formidable on first view, but it lacks character as sound argument. 10

In the Lohan Case those electors which had adopted the provisions of the statute of 1902, in so doing did unknowingly fix their status for a future classification which they could not foresee and thus did not contemplate, and which status, by the statute of 1912, was made the basis for a classification depriving them specially of a right to a referendum of that statute and subjecting them to its terms at once. With what equity or reason can we hold that when these electorates adopted the act of 1902 they must ipso facto have assented to the provisions of the act of 1912? They are different laws. Why might not the act of 1902 in many instances have been adopted by a body of voters which would have rejected the act of 1912. 20

Under this very point, Swayze, J., says (at page 43): 30

> "IT MUST BE CONFESSED THAT COUNTIES VOTING AT A REFERENDUM AFTER APRIL 1ST, 1912, WOULD HAVE THE CHANCE TO REJECT CERTAIN PROVISIONS IN THAT ACT WHICH WERE NOT IN THE ACT OF 1902, WHILE COUNTIES THAT HAD ACCEPTED THE ACT OF 1902 WOULD HAVE THOSE PROVISIONS FORCED UPON THEM BY THE LEGIS- 40

> LATURE. *IF THE CONSTITUTION REQUIRED THAT ALL COUNTIES SHOULD BE TREATED ALIKE, THE ARGUMENT WOULD BE FORCEFUL. SUCH, HOWEVER, IS NOT THE CASE.* ON THE CONTRARY, THE POWER OF THE LEGISLATURE TO CONTROL ITS SUBORDINATE AGENCIES HAS ALWAYS BEEN RECOGNIZED. ALL THAT THE CONSTITUTION REQUIRES IS GENERAL LAWS, AND, AS HAS ALREADY BEEN DECIDED, LEGISLATION WHICH REMOVED DIFFERENCES BETWEEN THE GOVERNMENTAL POWERS OF DIFFERENT MUNICIPALITIES IS CONSTITUTIONAL, THOUGH IT AFFECT ONE MUNICIPALITY ONLY."

If the requirement for generality in the application of statutes was not violated by the 1912 act in the Lohan Case, where is the violation in the present case? Of course, all this we urge by way of perfecting the parallel between the two cases.

Justice Swayze, in the Lohan Case, thus states the acid test (page 41):

> "If the effect of the act is to remove existing differences and to subject the internal affairs of counties to the operation of a general law, then it is not prohibited by the constitution, but is in strict accordance with the command of that instrument, which expressly enjoins upon the legislature the passage of general laws for such cases. I MUST DEAL WITH THIS ACT IN THE LIGHT OF THAT RULE."

The salient effect of the act sub judice is to *harmonize and render uniform for general application*

to all municipalities throughout the State a variety of statutes dealing with policemen's and firemen's pensions previously in effect in a number of municipalities in the State.

> "Where a statute is general in its terms, and its sole effect is to remove in some degree the differences existing in the various regulations of the internal affairs of towns or counties, and to subject those affairs to the operation of a general law, then the statute is not special or local in the constitutional sense, although the pre-existing legal conditions were such that it would effect a change in only one town or county."

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Bumsted vs. Govern, 47 N. J. L., 368 (cases cited).

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We would stress the significance of the words "in the constitutional sense" in the foregoing citation, and associate them with the test above quoted and applied in the Lohan Case.

It must not be forgotten that the constitutional inhibition which makes the present issue is not aimed at any mere statutory informality or crudeness. It contemplates only the prevention of the vice of dishonest trickery in the making of statute law. The provisions of Para. 4 of Section 7 of Art. 4 of the Constitution are prefaced with the words "To avoid improper influences."

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Newark vs. Mt. Pleasant Cem. Co., supra.

The prosecutor may urge what he conceives to be a developed legislative "policy" in dealing with the financial questions of municipal government, such as that involved in a pension law, and contend that the act sub judice contravenes that pol-

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icy. Such argument, it would seem, cannot carry far. Though it is not readily to be seen that the establishment of a legislative "policy" as such, merely upon a general similarity in statutory provisions extending over a period of time, can finally be determined, let it for the moment be conceded. What then? Is the legislature to be bound
10 always by a precedent which in its own time seemed right? And if it is to be thus bound at all, for how long? Is not policy in these circumstances by its very nature, susceptible of the freest modification?

> "The power of the legislature to control its subordinate agents has always been recognized" (Lohan Case, supra).

20 The strongest connotations of the word "policy" will not withstand the ordinary import of the word "control."

From a survey of the decisions it would appear that the strongest precedent to be presented by the prosecutor is Del. River Trans. Co. vs. Trenton, 86 N. J. L., 49. Between this case and the case sub judice there is a point of vital, fundamental and conclusive distinction. It is this: The import of the "Hennessy Act" in the Delaware River Case
30 was not to subject municipalities "to the operation of a general law" (Lohan Case), but was, on the contrary, "to deprive all commissioned governed municipalities of the powers that they respectively theretofore had by virtue of a great body of statutes applicable only to the class of which the several municipalities were respectively members" (Del. River Case, page 51). The "Hennessy Act" was "an attempt to restrict the operation of the statutes theretofore operative in he
40 City of Trenton and all other cities to those cities which had not adopted the "Walsh Act" and pro

tanto to repeal those acts so far as respects the adopting cities" (Ibid.). It was thus an act to deprive cities which, like Trenton, had adopted the "Walsh Act," and only by reason of such adoption, of "a great body of statutes." *The statute sub judice deprives no municipality of any law. It embraces one general, uniform law, designed for general, uniform application in the regulation of the internal affairs of cities.* The absoluteness of its generality is modified only in respect to the method by which it may be made applicable in the several municipalities, *and in that feature it is in precise accord with the precedent but recently established in this state in the Lohan Case.* 10

POINT III.

The statute does not embrace more than one object. 20

It is objected that the "act embraces police and fire matters which are not related to each other." It does not embrace both *police and fire matters.* It embraces but one single purpose: the establishment of a pension fund for retired policemen and firemen. The personal *objects* of this legislative purpose, distinct though they may be in the kind and nature of their public service, are not to be confounded with the single *subject* of that purpose. And is not this association of policemen and firemen in the one legislative purpose now considered a natural one? They alone comprise the two departments of municipal government organized to defend and protect the populace by a constant and perilous vigil and duty. Are they not *by this peril made one for the purpose* of any legislation looking to a personal pecuniary insurance of them and their dependents against the hazards of their ser- 30 40

vice? They are the two quasi-military departments of municipal government, subject alike to a quasi-military discipline and danger.

It is respectfully submitted that Chapter 160 of the Laws of 1920 is in conformity with all constitutional
10 **requirements.**

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