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PETITION.

New Jersey Supreme Court

THE CITY OF NEWARK, a municipal corporation of the State of New Jersey, and JOHN HOWE, Treasurer of the City of Newark, *Relators,* *vs.* PUBLIC SERVICE COORDINATED TRANSPORT, a corporation of the State of New Jersey, *Respondent.*	*On Application for Writ of Mandamus.* *Petition.*

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The petition of The City of Newark, a municipal corporation of the State of New Jersey, and John Howe, Treasurer of the said The City of Newark, respectfully shows:

1. Relator, The City of Newark, is a municipal corporation of the State of New Jersey, and relator, John Howe, is City Treasurer of said municipal corporation.

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2. Public Service Coordinated Transport is a corporation of the State of New Jersey, having its principal office in the City of Newark, County of Essex and State of New Jersey, and is engaged in the business of passenger transportation by means of trolley cars and automobile busses operating within the City of Newark and elsewhere.

3. Under and by virtue of the provisions of an act, entitled, "An Act for the taxation of the

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property and franchises of street railroad corporations using or occupying public streets, highways, roads, lanes, or other public places in this State," approved May 23, 1906, and the various supplements thereto and amendments thereof, Public Service Coordinated Transport is under a duty to pay to the City Treasurer of the City of Newark as and for franchise tax for the operation of said trolley cars within said City a sum equal to five per cent. (5%) of the gross revenue received by Public Service Coordinated Transport from passenger traffic within the City of Newark, provided however that as to such lines of trolleys as shall operate not only within the City of Newark but within other municipalities, said five per cent. (5%) should be calculated upon such proportion of the total receipts of said lines as the length of the line within the City of Newark bears to the total length of said line both within and without said city.

4. Said payments, notwithstanding the provisions of said act above recited, are payable to the relator, John Howe, as Treasurer of the City of Newark, under and by virtue of the provisions of certain ordinances heretofore adopted by the Board of Street and Water Commissioners of the City of Newark in relation to the occupation and use of the streets and public places of the City of Newark by said trolley lines, which said ordinances contain provisions for the payments hereinabove set forth, and are continued in full force and effect, notwithstanding the passage of said act above set forth, by virtue of paragraph 7 thereof, which is in words following:

> "Sec. 7. All money now or hereafter payable by any street railroad corporation to any taxing district for its exclusive use,

pursuant to any contract, agreement, resolution or ordinance (except money expended for paving or repairing any street, highway or other public place, or taxes on real or personal property) shall be paid notwithstanding this act, and when paid shall be considered on account of or in full, as the case may be, for the franchise tax to be assessed and apportioned according to the provisions hereof; if the amount so payable is greater than the amount of the franchise tax apportioned to such taxing district, such payment shall be in lieu thereof, and if less, the difference in amount shall be payable as herein provided (P. L. 1906, p. 647).

5. Under and by virtue of the provisions of said ordinance and of the authority of said statute, Public Service Coordinated Transport became and was under the duty on the 31st day of December, 1929, to pay to relator, John Howe, as City Treasurer of the City of Newark, the sum of two hundred and three thousand four hundred and twenty-five dollars and ninety-four cents ($203,425.94), as appears by the statement of said Public Service Coordinated Transport submitted to the said relator, John Home, Treasurer as aforesaid, as of the 31st day of December, 1929.

6. Notwithstanding said duty, the said Public Service Coordinated Transport paid to relator, John Howe, as such Treasurer, the sum of one hundred and seventy thousand six hundred and forty-nine dollars and sixty-nine cents ($170,649.69) only, leaving unpaid upon said larger sum so due and owing the sum of thirty-two thousand seven hundred and seventy-six dollars and twenty-five cents ($32,776.25).

7. In addition to said trolley lines, said Public Service Coordinated Transport operated within the City of Newark and elsewhere during the years 1929-1930 other bus lines for the transportation of passengers.

8. By virtue of the provisions of an act, entitled "An Act concerning auto busses, commonly called jitneys, and their operation in cities," approved March 17, 1916, and the several supplements thereto and amendments thereof, Public Service Coordinated Transport was during the years 1929-1930 and still is under the duty to file, on or before the tenth day of each calendar month, with the City Treasurer of the City of Newark a statement, verified by oath, showing the gross receipts from the business of such auto busses during the preceding calendar month, and at the same time to pay to the City Treasurer five per cent. (5%) of such gross receipts as a monthly franchise tax for revenue for the use of such city; provided, however, that if any routes over which any of said auto busses were operated should extend beyond the limits of such city, then the said Public Service Coordinated Transport was under duty to include in such statement the length of such routes over which such auto busses were operated, both within and without the city, and pay as said franchise tax to said City five per cent. (5%) of such proportion of the gross receipts as the length of such routes in the City bear to the whole length of such routes.

9. Under and by virtue of the provisions of said act the Public Service Coordinated Transport was under duty, as appears by the returns of said company to the City Treasurer, to pay

to the City Treasurer on or before the 10th day of each month set forth in the schedule hereto annexed and made a part hereof, and entitled "Schedule A," the several sums of money which are, in said schedule, first set after the several months throughout the period included in said schedule, but notwithstanding said duty Public Service Coordinated Transport paid to the City for said respective months only the sums of money appearing secondly after said several months on said "Schedule A," leaving unpaid and due to the City of Newark as nearly as relator can ascertain the several sums of money for the respective months thirdly set forth in said schedule, aggregating the total sum of one hundred and thirteen thousand three hundred and ninety-six dollars and thirty-eight cents ($113,396.38) for the months from May, 1929, to September, 1930, inclusive.

10. Relators further show that they are informed and believe that said deductions have been made by Public Service Coordinated Transport, both in relation to the franchise taxes due for the operation of said trolley lines and for the operation of said bus lines, under a purported exemption alleged to be allowed to said Public Service Coordinated Transport under and by virtue of the provisions of a certain act of the Legislature, entitled "A Supplement to a act entitled 'An act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929.

Petition.

11. The relevant portions of said act are as follows:

"1. On and after the passage of this act each public utility, as defined in the act to which this is a supplement, operating any street railway, traction railway or auto bus, shall grant transportation to uniformed public officers while engaged in the performance of their public duties, or police officers of whatever grade or rank acting as detectives, county detectives or detectives attached to or connected with the office of the prosecutor of the pleas in any county in this State while engaged in the performance of their public duties, whose duties require police duty to be performed without uniform, without the collection of fares from such public officers; PROVIDED, HOWEVER, that for such transportation an amount equal to the lawful fares shall be considered a credit on account of any franchise tax or charges in the nature thereof payable or apportioned by law or ordinance to any municipality wherein such transportation takes place."

12. Your petitioners show that notwithstanding the passage of said act, Public Service Coordinated Transport was and still is under the duty to make the returns provided for in said statutes hereinbefore referred to, and to pay to the relator, the City Treasurer of the City of Newark, full payment of franchise tax in said acts provided for, for the reason that the said act of May 6, 1929, above cited, is wholly unconstitutional and void, and could confer upon the Public Service Coordinated Transport no rights whatsoever.

13. Your petitioners are advised by counsel that said act is unconstitutional for the following reasons:

(a) That the object of said act is not expressed in its title, as required by Article IV, Section VII, paragraph 4 of the State Constitution. 10

(b) It seeks to amend by an act entitled "A Supplement to an act entitled 'An act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929, an act relating to the taxation and franchises of street railway corporations and an act concerning auto busses and their operation in cities. 20

(c) That by an act entitled "A Supplement to a act entitled 'An act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929, it seeks to affect the taxation of street railways and auto busses by the municipalities of this State.

(d) That by an act entitled "A Supplement to a act entitled 'An act concerning public utillities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929, it seeks to impose upon municipalities the obligation of paying from municipal funds for the transportation of uniformed public officers, and police officers of whatever grade or rank, acting as detectives, county detectives or detectives attached to or connected with the 30 40

office of the Prosecutor of the Pleas in any county in this State while engaged in the performance of public duties.

(e) It attempts to regulate the internal affairs of towns, contrary to the provisions of Article IV, Section VII, paragraph 11 of the State Constitution.

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(f) It seeks to compel municipalities to bear the expenses of public officials not officials of said municipalities.

(g) It seeks to take from said municipalities the right to determine whether or not the said municipalities shall pay out of municipal funds the costs of transportation of such officers.

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(h) It seeks to permit the Public Service Coordinated Transport arbitrarily to deduct from monies due to the City sums of money alleged to represent the fares of such officers without proof as to their official capacity, or as to the fact that they are engaged in the performance of public duties.

(i) It seeks to impose on municipalities the payment of the costs of other municipalities without the consent of such municipalities.

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Your petitioners therefore pray that a writ of mandamus may issue out of this court, compelling Public Service Coordinated Transport to pay to relator, John Howe, as City Treasurer of the relator, The City of Newark, the amounts of money so withheld, under the alleged authority

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of said act of May 6, 1929, together with lawful interest thereon.

FRANK A. BOETTNER,
Attorney for Relators.

LOUIS A. FAST,
SPAULDING FRAZER,
Of Counsel.

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STATE OF NEW JERSEY,
COUNTY OF ESSEX. } SS.:

JOHN HOWE, being duly sworn according to law, on his oath deposes and says:

1. I am Director of Revenue and Finance of the City of Newark, and was such City Treasurer of said City, both prior and subsequent to the passage of an act entitled: "A Supplement to an act entitled 'An Act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April twenty-first, nineteen hundred and eleven," approved May sixth, nineteen hundred and twenty-nine.

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2. Under and by virtue of the provisions of certain ordinances passed by the Board of Street and Water Commissioners of the City of Newark, the operation of which was continued in effect by paragraph seven of an act entitled "An Act for the Taxation of the property and franchises of street railroad corporations, using or occupying public streets, highways, roads, lanes or other public places in this State," approved May twenty-third, nineteen hundred and six, and the various supplements thereto and acts amendatory

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thereof, and uder and by virtue of the provisions of said last mentioned act, and under and by virtue of the provisions of an act entitled "An Act concerning auto busses, commonly called Jitneys, and their operation in streets," approved May seventeenth, nineteen hundred and sixteen, and the various supplements thereto and acts amendatory thereof, during all of the year 1929, and the current year 1930, Public Service Coordinated Transport was and still is under the duty to make certain returns amounting to five per cent. of the gross receipts of said Public Service Coordinated Transport from passenger traffic within the City of Newark as provided for in said acts and ordinances.

3. With respect to the returns made upon the gross receipts derived from trolley passengers within the said city, in any one year, returns are made annually as of December 31st, and with respect to the returns made on receipts from auto bus passengers, returns are made monthly on or before the tenth day of each month upon the gross returns of the preceding month.

4. Subsequent to the passage of an act entitled: "A Supplement to an act entitled 'An Act concerning public utlilities, to create a board of public utility commissioners and to prescribe its duties and powers,' approved April twenty-first, nineteen hundred and eleven," approved May sixth, nineteen hundred and twenty-nine, the said Public Service Coordinated Transport, in the making of such returns to me as City Treasurer, deducted therefrom certain sums of money alleged to be deductions authorized by virtue of the provisions of said last mentioned act.

5. That said deductions, insofar as they relate to the percentage upon the gross income from trolley passengers, amounted, as nearly as I have been able to ascertain, as of December 31, 1929, to the sum of thirty-two thousand seven hundred and seventy-six dollars and twenty-five cents ($32,776.25). The five per cent. (5%) computed by said Public Service Coordinated Transport upon the gross trolley returns for the year 1929 amounted to two hundred and three thousand four hundred and twenty-five dollars and ninety cent ($203,425.90), whereas the payment amounted to one hundred and seventy thousand six hundred and forty-nine dollars and sixty-nine cents ($170,649.69).

6. In the case of the returns for auto busses, under and by virtue of the Act of 1916 above referred to, and supplements and amendments thereto, made to me as City Treasurer monthly, the five per cent. (5%) of the gross receipts from auto bus passengers as reported by Public Service Coordinated Transport for the period from May, 1929, to September, 1930, inclusive, and the amount of payment made by said Public Service Coordinated Transport to me as City Treasurer, and the difference between the total of said five per cent. (5%) and the mount thus paid appear as nearly as can be ascertained upon Schedule A annexed to the petition hereto.

7. I am duly authorized to make this application on behalf of the City of Newark as its City Treasurer by order of the Board of Commissioners of the City of Newark.

JOHN HOWE.

Subscribed and sworn to before me this 19th day of November, A. D. 1930.

VINCENT J. CASALE,
A Master in Chancery of New Jersey.

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Month	5% of Total Gross Receipts	State Deductible Items	Paid Newark
1929			
May	32,850.93	5,687.01	15,282.84
June	30,516.17	6,558.67	13,272.64
July	30,585.95	6,865.68	12,468.66
August	30,348.72	6,638.61	12,448.36
September	30,839.43	6,549.13	12,876.82
October	32,924.55	6,762.95	14,104.98
November	31,528.44	6,701.25	13,393.74
December	32,637.99	6,735.27	13,695.60
1930			
January	31,553.44	6,733.51	13,282.57
February	28,000.53	6,566.89	11,501.24
March	31,570.05	6,905.56	13,226.56
April	31,191.18	5,816.70	13,626.31
May	31,382.78	6,884.71	12,838.58
June	29,390.56	6,528.86	11,913.19
July	27,870.10	6,810.01	10,530.44
August	27,164.10	7,642.22	9,716.93
September	28,392.28	7,009.35	11,192.83
October	30,382.09	6,100.60	13,236.47

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30 The above figures taken from sworn statement submitted monthly by The Public Service Coordinated Transport Co.

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AFFIDAVIT.

NEW JERSEY SUPREME COURT.

City of Newark, in the County of Essex, and John Howe, City Treasurer of the City of Newark, *Relators,* *vs.* Public Service Coordinated Transport, a corporation of the State of New Jersey, *Defendant.*	*On Application for Writ of Mandamus.* *Affidavit.*

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State of New Jersey, County of Essex. } ss.:

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John Howe, being duly sworn according to law, on his oath deposes and says:

1. I am City Treasurer of the City of Newark.

2. The relator in the above-entitled cause, City of Newark in the County of Essex, is a municipal corporation of the State of New Jersey.

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3. That Public Service Coordinated Transport is a corporation of the State of New Jersey engaged in the business of passenger transportation by means of trolley cars and auto busses, both within and without the said City of Newark.

4. That by virtue of certain ordinances heretofore adopted by the Board of Street and Water Commissioners of the City of Newark, and the provisions of an act entitled "An Act for the

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taxation of the property and franchises of street railroad corporations using or occupying public streets, highways, roads, lanes or other public places in this State," approved May 23, 1906, and the act supplementary thereto and amendatory thereof, Public Service Coordinated Transport, prior to the passage of a certain act entitled "A Supplement to an act entitled 'An Act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929, was under duty and still is under duty, except as said duty may have been modified by said last mentioned act, to pay to the City Treasurer of the City of Newark the sum of five per cent. of the gross receipts from trolley passenger fares upon all trolley lines operating wholly within the city limits of the City of Newark, and upon such proportion of said trolley fares collected upon lines partly within the City of Newark and partly without said City of Newark as the length of said lines within the City should bear to the total length of said lines.

5. By virtue of the provisions of an act entitled "An Act concerning auto busses, commonly called jitneys, and their operation in cities," approved March 17, 1916, and the act supplementary thereto and amendatory thereof, Public Service Coordinated Transport, prior to the passage of a certain act entitled "A Supplement to an act entitled 'An Act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929, was under duty and still is under duty, except as said duty may have been modified by said last

mentioned act, to pay to the City Treasurer of the City of Newark the sum of five per cent. of the gross receipts from auto bus passenger fares upon all auto bus lines operating wholly within the city limits of the City of Newark, and upon such proportion of said auto bus fares collected upon lines partly within the City of Newark and partly without said City of Newark as the length of said lines within the City should bear to the total length of said lines.

6. That from the said sums of money represented by said five per cent. of the gross receipts from trolley and bus operations within the City of Newark, Public Service Coordinated Transport has, since the adoption of said supplement to the act concerning public utilities in paragraphs three and four referred to, deducted from May 7, 1930, hitherto certain sums of money alleged to represent the value of fares not collected for the transportation of uniformed public officers while engaged in the performance of their public duties, and of police officers of whatever grade or rank acting as detectives, county detectives or detectives attached to or connected with the office of the prosecutor of the pleas in Essex County while engaged in the performance of their public duties whose duties required police duty to be performed without uniform, which said deductions have been made by Public Service Coordinated Transport under and by virtue of the authority claimed to have been granted to Public Service Coordinated Transport to that end under and by virtue of the provisions of "A Supplement to an act entitled 'An Act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929.

Affidavit of John Howe, City Treasurer.

7. That I, as City Treasurer, on behalf of the City of Newark, have inquired of Public Service Coordinated Transport the amounts of said deductions and have been informed by Public Service Coordinated Transport as follows:

10 For transportation upon trolley lines from May 7, 1929, to and including the month of April, 1930:

May 7 to 31, 1929	$ 2,761.60
June	3,089.30
July	2,674.15
August	2,413.20
September	2,439.35
October	2,799.20
November	2,758.65
December	2,989.30
January, 1930	3,074.40
February	2,643.65
March	2,632.70
April	2,500.75
Total	$32,776.25

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May 7-31, 1929	$ 1,043.05
June	1,421.80
July	1,330.35
August	1,180.05
September	1,157.60
October	1,338.20
November	1,266.45
December	1,453.55
Total	$10,191.05

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January, 1930	$ 1,544.65
February	1,394.50
March	1,538.50
April	841.95
May	1,363.95
June	1,082.80
July	1,309.50
August	1,189.15
September	929.45
Total	$11,194.45

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making a total of $54,161.75 so deducted by Public Service Coordinated Transport within the periods above set forth.

8. That Public Service Coordinated Transport continues under the alleged authority of said act to make said deductions.

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9. That demand has been made by me, City Treasurer as aforesaid, upon behalf of the City of Newark, for the payment of the sums of money so aforesaid deducted by Public Service Coordinated Transport, and said demand has been refused for the reason aforesaid.

JOHN HOWE.

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Subscribed and sworn to before me
this 12th day of December, 1930.

LOUIS A. FAST,
Master in Chancery of New Jersey.

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ALTERNATIVE WRIT OF MANDAMUS.

New Jersey, *ss.*

The State of New Jersey, to Public Service Coordinated Transport, a corporation of the State of New Jersey, Greeting:

(seal)

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Whereas City of Newark in the County of Essex, is a municipal corporation of the State of New Jersey, and John Howe is treasurer of said corporation.

Whereas Public Service Coordinated Transport is a corporation of the State of New Jersey engaged in the business of passenger transportation by means of trolley cars and auto busses, both within and without the said City of Newark.

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Whereas by virtue of certain ordinances heretofore adopted by the Board of Street and Water Commissioners of the City of Newark, and the provisions of an act entitled "An Act for the taxation of the property and franchises of street railroad corporations using or occupying public streets, highways, roads, lanes or other public places in this State," approved May 23, 1906, and the act supplementary thereto and amendatory thereof, Public Service Coordinated Transport, prior to the passage of a certain act entitled "A supplement to an act entitled 'An Act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929, was under duty and still is under duty, except as said duty may have been modified by said last mentioned act, to pay to the City Treasurer of the City of Newark the sum of five per cent. of the gross receipts from

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trolley passenger fares upon all trolley lines operating wholly within the city limits of the City of Newark, and upon such proportion of said trolley fares collected upon lines partly within the City of Newark and partly without said City of Newark as the length of said lines within the city should bear to the total length of said lines. 10

WHEREAS by virtue of the provisions of an act entitled "An Act concerning auto busses, commonly called jitneys, and their operation in cities," approved March 17, 1916, and the act supplementary thereto and amendatory thereof, Public Service Coordinated Transport, prior to the passage of a certain act entitled "A supplement to an act entitled 'An Act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929, was under duty and still is under duty, except as said duty may have been modified by said last mentioned act, to pay to the City Treasurer of the City of Newark the sum of five per cent. of the gross receipts from auto bus passenger fares upon all auto bus lines operating wholly within the city limits of the City of Newark, and upon such proportion of said auto bus fares collected upon lines partly within the City of Newark and partly without said City of Newark as the length of said lines within the city should bear to the total length of said lines. 20 30

WHEREAS from the said sums of money represented by said five per cent. of the gross receipts from trolley and bus operations within the City of Newark, Public Service Coordinated Transport has, since the adoption of said supplement 40

to the act concerning public utilities in paragraphs three and four referred to, deducted from May 7, 1930, hitherto certain sums of money alleged to represent the value of fares not collected for the transportation of uniformed public officers while engaged in the performance of their public duties, and of police officers of whatever grade or rank acting as detectives, county detectives or detectives attached to or connected with the office of the prosecutor of the pleas in Essex County while engaged in the performance of their public duties whose duties required police duty to be performed without uniform, which said deductions have been made by Public Service Coordinated Transport under and by virtue of the authority claimed to have been granted to Public Service Coordinated Transport to that end under and by virtue of the provisions of "A supplement to an act entitled 'An Act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929.

WHEREAS the City of Newark has no means of ascertaining the number of said uniformed and other officers and detectives so alleged to have been transported by Public Service Coordinated Transport as aforesaid, or the times at which said transportation was given except by inquiry of Public Service Coordinated Transport.

WHEREAS the said John Howe, City Treasurer as aforesaid, on behalf of the City of Newark has inquired of Public Service Coordinated Transport the amounts of said deductions and has been informed by Public Service Coordinated Transport as follows:

For transportation upon trolley lines from May 7, 1929, to and including the month of April, 1930.

May 7 to 31, 1929	$ 2,761.60
June	3,089.30
July	2,674.15
August	2,413.20
September	2,439.35
October	2,799.20
November	2,758.65
December	2,989.30
January, 1930	3,074.40
February	2,643.65
March	2,632.70
April	2,500.75
Total	$32,776.25

For transportation upon auto busses from May 7, 1929, to and including the month of September, 1930.

May 7-31, 1929	$ 1,043.05
June	1,421.80
July	1,330.35
August	1,180.05
September	1,157.60
October	1,338.20
November	1,266.45
December	1,453.55
Total	$10,191.05

January, 1930	1,544.65
February	1,394.50
March	1,538.50
April	841.95
May	1,363.95
June	1,082.80
July	1,309.50
August	1,189.15
September	929.45
Total	$11,194.45

making a total of $54,161.75 so deducted by Public Service Coordinated Transport within the periods above set forth.

WHEREAS Public Service Coordinated Transport continues under the alleged authority of said act to make said deductions,

WHEREAS demand has been made by John Howe, City Treasurer as aforesaid, upon behalf of the City of Newark, for the payment of the sums of money so aforesaid deducted.

Nevertheless, that you, the said Public Service Coordinated Transport have refused and yet do refuse to pay to the said John Howe, City Treasurer, as aforesaid, on behalf of the City of Newark, the said sums of money by you retained as aforesaid.

We, therefore, willing that due and speedy justice should be done in this behalf, command and strictly enjoin you, that immediately after the receipt of this writ, you do pay or cause to be paid to the said John Howe, City Treasurer of the City of Newark, on behalf of the said City of Newark, the said sums of money so by you withheld and retained, or cause to us to the

contrary thereof signify, lest in your default complaint should come to us repeated; and how you shall execute this, our command, certify to our Justices of our Supreme Court of Judicature, at Trenton, on the third Tuesday of January, 1931, together with this our writ, and this in no wise omit at your peril.

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WITNESS, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton this 22nd day of December, 1930.

FRED L. BLOODGOOD,
Clerk.

FRANK A. BOETTNER,
Attorney.

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The within writ is allowed.

Let it be sealed.

WM. S. GUMMERE,
C. J.

Dated December 22, 1930.

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DEMURRER.

NEW JERSEY SUPREME COURT.

City of Newark, in the County of Essex, and John Howe, City Treasurer of the City of Newark, *Relators,* *vs.* Public Service Coordinated Transport, a corporation of The State of New Jersey, *Respondent.*	*On Mandamus.* *Demurrer.*

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20 Public Service Coordinated Transport, a corporation of the State of New Jersey, the said respondent, by William H. Speer, its attorney, comes and says that it should not be compelled to pay or cause to be paid to John Howe, City Treasurer of the City of Newark, the said sums of thirty-two thousand seven hundred seventy-six dollars and fifty cents ($32,776.50) deducted by said Public Service Coordinated Transport, for transportation upon its trolley lines, as in said alternative writ of mandamus alleged, from May 7, 1929, to and including the month of April, 1930; and of ten thousand one hundred ninety-one dollars and five cents ($10,191.05) for transportation upon auto busses from May 7, 1929, to and including the month of December, 1929; and of eleven thousand one hundred ninety-four dollars and forty-five cents ($11,194.45) for transportation upon auto busses from and including January 1, 1930, to and including the month of Sep-

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tember, 1930, making a total of fifty-four thousand one hundred sixty-one dollars and seventy-five cents ($54,161.75) so deducted by Public Service Coordinated Transport within the periods above set forth, for transportation granted and furnished by it within said periods to uniformed officers while engaged in the performance of their public duties, and of police officers of various grades and rank acting as detectives, county detectives and detectives attached to and connected with the office of the Prosecutor of the Pleas in any county in this State while engaged in the performance of their public duties, whose duties required police duty to be performed without uniform, without the collection of fares from such public officers, and which transportation of such officers and policemen was granted by said respondent and took place within the City of Newark, and which said sums and each of them was by said respondent deducted from and considered a credit on account of the said franchise tax or charges in the nature thereof payable or apportioned by law or ordinance to said City of Newark wherein such transportation took place, and all under, by virtue and in pursuance of Chapter 324 of the Pamphlet Laws of the State of New Jersey, approved May 6, 1929, and entitled, "A supplement to an act entitled 'An Act concerning public utilities; to create a Board of Public Utilities Commissioners, and to prescribe its duties and powers,' approved April twenty-first, nineteen hundred and eleven," which is found in Pamphlet Laws, 1929, page 740, as by the annexed writ it is commanded to do, because it says that the matters contained in the said writ, in manner and form as the same are stated and set forth, are not sufficient in law for the said City of New-

ark, in the County of Essex, and John Howe, City Treasurer of the City of Newark, the above-named relators, to have or maintain their aforesaid writ of mandamus against it, the said respondent Public Service Coordinated Transport, a corporation of the State of New Jersey; and
10 that it, the said Public Service Coordinated Transport is not bound by the law of the land to obey the command of the said writ of mandamus and to pay or cause to be paid to the said John Howe, City Treasurer of the City of Newark, on behalf of the City of Newark, the said sums of money so by it deducted as aforesaid, as by the said writ it is commanded to do; and the said Public Service Coordinated Transport according to the form of the statute in such case made and
20 provided states and shows to the Court here the following causes of demurrer to the said writ of mandamus, that is to say: That, as alleged in said alternative writ of mandamus, "said deductions have been made by Public Service Coordinated Transport under and by virtue of the authority claimed to have been granted to Public Service Coordinated Transport to that end under and by virtue of the provisions of 'A Supplement to an act entitled "An Act concerning pub-
30 lic utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911' approved May 6, 1929," and this respondent says that said Act approved May 6, 1929, is full, complete and ample warrant and justification to this respondent to deduct, withhold and retain the said sum of $54,161.75, and the several items of which the same is made up, and that said act which is Chapter 324 of the Laws of the State of New Jersey for
40 the year 1929 is a constitutional exercise of legis-

lative authority, and fully empowers and warrants this respondent in deducting and withholding said sum of $54,161.75 and the items of which the sum is made up, as set forth in said writ of mandamus; and that the allegations and statements set forth in the said writ are uncertain, and do not authorize the command of the said writ; and the said respondent, Public Service Coordinated Transport, prays judgment that the said writ be set aside, and it, the said Public Service Coordinated Transport, be relieved from obeying the said command.

WILLIAM H. SPEER,
Attorney of Public Service
Coordinate Transport.

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OPINION OF SUPREME COURT.

NEW JERSEY SUPREME COURT.

No. 87, January Term, 1931.

10 City of Newark, in the County of Essex, and John Howe, City Treasurer of the City of Newark,
Relators,
vs.
Public Service Coordinated Transport, a corporation,
Respondent.

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Submitted January Term, 1931.

Decided June, 1931.

On Mandamus.

Before Justices Case, Daly and Donges.

For relators, Frank A. Boettner, Spaulding Frazer and Louis A. Fast on the brief.

For respondent, William H. Speer.

30 Per Curiam.

On the petition of the relators an alternative writ of mandamus issued to compel the payment to the City Treasurer of the City of Newark certain moneys deducted by the respondent for the transportation of police officers and municipal and county detectives, as authorized by Chapter 324 of the Laws of 1929 (a supplement to the "Act concerning public utilities"), from the five per centum of the respondent's gross receipts
40 payable under the act entitled "An Act concern-

ing auto busses, commonly called jitneys, and their operation in cities," approved March 17, 1916, and the acts supplemental thereto and amendatory thereof. There was a demurrer and a joinder thereon. The single point presented for our consideration is the contention of the relators that Chapter 324 of the Laws of 1929, under which respondent claims its right to the deduction, is unconstitutional.

The first argument advanced is that the legislation is unconstitutional because its object is not expressed in its title. We consider that this point is answered by the decision of the Court of Errors and Appeals in State *v.* Sutton, 87 N. J. L. 192. The court there had under review an earlier form (Chapter 159, P. L. 1912) of the precise statute now before us. The 1912 act provided that each street railway company or corporation referred to in the public utilities act should "grant free transportation of uniformed public officers while engaged in the performance of their public duties, or police officers of whatever grade or rank acting as detectives, county detectives or detectives attached to or connected with the office of the prosecutor of the pleas in any county in this state while engaged in the performance of their public duties, whose duties require police duty to be performed without uniform." The 1929 act is in essence the same except that the word "free" is struck out and there is added a provision that for such transportation an amount equal to the lawful fares shall be considered a credit on account of any franchise tax, or charges in the nature thereof, payable or apportioned by law or ordinance to any municipality wherein such transportation

takes place. The title to the 1912 statute was precisely the same as the title of the 1929 statute, to wit, "A Supplement to an act entitled 'An Act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911." The Court of Errors and Appeals in the Sutton case sustained the 1912 legislation upon the ground that it was a constitutional exercise by the legislature of its police power, inasmuch as the result of the statute was to induce the presence of police upon street railway cars and the police protection thus procured was within the object expressed in the language of the statute; and this, too, even if compliance with the statute meant the exacting of tribute from the carrying companies. The 1912 statute placed the expense of the transportation of the police officers upon the carrying companies; we are assuming, since that is the relators' contention, that the 1929 legislation places it upon the municipality. That is a distinction that we conceive to be without a difference with respect to the completeness of the title. So far as the relation between the title and body of the legislation is concerned, we consider that the 1929 legislation stands on the same footing as that of the 1912 legislation. Since the latter has been declared constitutional *in toto* and since the greater includes the less, we must assume that the constitutional requirements are met in its title as well as in the other features of the statute. We conclude that the legislation under review is sound against this attack.

The second point is that the 1929 act is unconstitutional as violative of article IV, section 7,

paragraph 12 of the state constitution; in other words, that the effect of the act is to levy upon a municipality an arbitrary and undefined contribution for the benefit of counties and other municipalities. Again we assume the accuracy of relators' assertion that the method of compensation to the utility provided by the statute is a levy against the municipality. It is to be borne in mind that the essence of the legislation has been held to be the furnishing of police protection. As was said in the Sutton case "The transportation of the officer is a subordinate incident to the police regulation, and of the power of the legislature to enact such a regulation there would seem to be neither room for doubt nor ground for denial." It is difficult to distinguish, in point of constitutionality, between a statute that provides police protection within a municipality at the expense of a utility and one that provides police protection within a municipality at the expense of the municipality; that is to say, it is difficult to understand how the former could be constitutional, and the latter, under the argument advanced by the relators, unconstitutional. A municipality is under the obligation to provide, or, at any rate, is well within its constitutional and statutory authority in provided, police protection within its boundaries. The relators raise the objection that the police officers carried, under the 1929 statute, at the expense of the municipality include police officers of other municipalities and of county governments; but so did the 1912 statute which has been sustained not only in the Supreme Court and the Court of Errors and Appeals, but also in the United States Supreme Court. And if the carrying of such

officials affords police protection to the municipality what is the impropriety, constitutional or otherwise, in the payment therefor from municipal funds? We fail to distinguish how the shifting of the expense of furnishing the police transportation from the utility to the municipality changes the constitutional aspect.

The third point is that the statute is unconstitutional as violative of article I, sections 19 and 20, of the state constitution, by which provisions the municipality is prohibited from giving any money or property, or from loaning its money or credit to or in aid of any corporation. The municipality is not called upon to give money or property, or to loan its money or credit or to appropriate any money to or for the use of any corporation. It is merely paying a cost item of police protection within its municipal lines. The amount withheld by the utility for the carrying of a police officer is precisely the same as it charges every passenger on its vehicles, and this rate has been fixed by the Board of Public Utility Commissioners. A full *quid pro quo,* as determined by an arm of the legislature, is given. The city in paying for fares of police officers actually transported no more contributes or gives funds to the utility than it gives money to the contractor, whether corporate or individual, who paves a street or builds a bridge. Indeed, the funds devoted to this purpose are not funds raised by the City of Newark as a part of its municipal taxes. It is a fund collected by the state and disbursed amongst the municipalities of the state in such fashion as the legislature has determined. Viewed in that light, the disbursement is not by the city. It is by the legislature

and for a cause, namely, police protection, and in the exercise of a power of the legislature, of which, as has been well said, there seems "to be neither room for doubt nor ground for denial."

The peremptory writ is denied.

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RULE FOR JUDGMENT.

Entered July 17, 1931.

NEW JERSEY SUPREME COURT.

No. 87, January Term, 1931.

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City of Newark, in the County of Essex, and John Howe, City Treasurer of the City of Newark, *Relators,* *vs.* Public Service Coordinated Transport, a corporation, *Respondent.*	*On Mandamus.* *On Demurrer.* *Rule for Judgment.*

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An alternative writ of mandamus having issued out of this Court in the above-entitled matter, bearing date December, 1930, calling upon respondent to pay or cause to be paid to John Howe, City Treasurer of the City of Newark, on behalf of the said City of Newark, certain sums of money therein alleged to have been withheld and retained from said City Treasurer and City, or else show cause to the contrary thereof, and said respondent having filed a demurrer to said alternative writ of mandamus, and said relators having filed a joinder thereon, and said issue of law thus joined having come on for hearing at the January term, 1931, of this Court, the same having been orally argued and the Court having considered said alternative writ of mandamus, demurrer, and joinder thereon, and the oral arguments and briefs of counsel, and being

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of opinion that said alternative writ of mandamus is not good and sufficient in law, and that judgment should be given in favor of said respondent, and that a peremptory writ of mandamus should be denied, It Is, on this 15th day of July, nineteen hundred and thirty-one, on motion of William H. Speer, attorney for respondent,

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Ordered, that the said demurrer be and the same is hereby sustained, that judgment final be entered herein in favor of respondent and against relators, and that the granting of a peremptory writ of mandamus be and the same hereby is denied.

By the Court

(Sgd.) CLARENCE E. CASE,
P. J.

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NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

THE CITY OF NEWARK, in the County of Essex, and JOHN HOWE, City Treasurer of the City of Newark, *Relators,* *vs.* PUBLIC SERVICE COORDINATED TRANSPORT, a corporation of The State of New Jersey, *Respondent.*	*On Mandamus.* *Notice of Appeal.*

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20 TAKE NOTICE, That the City of Newark, in the County of Essex, and John Howe, City Treasurer of the City of Newark, relators in the above entitled cause, hereby appeal to the Court of Errors and Appeals of New Jersey from the judgment of the New Jersey Supreme Court, denying a peremptory writ of mandamus;

AND, TAKE FURTHER NOTICE, that the said Relators assign the following grounds for said

30 appeal:

1. The provisions of the act entitled, "A Supplement to an act entitled 'An act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April 21, 1911," approved May 6, 1929, because said act is unconstitutional and violation of Article 4, Section 7, Paragraph 4 of the State Constitution.

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2. Because said above mentioned act is violation of Article 4, Section 7, Paragraph 12 of said Constitution.

3. Because said above mentioned act is violation of Article 1, Section 19 of said Constitution.

4. Because said above mentioned act is violation of Article 1, Section 20 of said Constitution. 10

FRANK A. BOETTNER,
Attorney of Relators.

SPAULDING FRAZER,
LOUIS A. FAST,
Of Counsel.

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96 FEB.T.1932

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

City of Newark, in the County of Essex, and John Howe, City Treasurer of the City of Newark, *Relators-Appellants,* *vs.* Public Service Coordinated Transport, a corporation of the State of New Jersey, *Defendant-Respondent.*	*On Mandamus.* *On Appeal from Supreme Court.*

BRIEF FOR RELATORS-APPELLANTS.

Facts.

The demurrer filed in this cause raises the question: Is it within the competence of the Legislature as a supplement to an act entitled "'An act concerning public utilities; to create a board of public utility commissioners and to prescribe its powers and duties,' approved April Twenty-first, nineteen hundred and eleven," P. L. 1929, p. 740, to grant to a specific type of public utility—to wit, those engaged in passenger carriage—the power to deduct from the total of taxes to which such utilities are subject under two quite distinct enactments, as against municipalities wherein they are carried, the total of fares, at prevailing rates, which the rides of various types of police officer represent.

Under an act entitled "An act for the taxation of the property and franchises of street railroad corporations using or occupying public streets, highways, roads, lanes or other public places in

this State," approved May Twenty-third, nineteen hundred and six, Compiled Statutes, p. 5283, and under another act entitled, "An act concerning auto busses, commonly called jitneys, and their operation in cities," approved March Seventeenth, nineteen hundred and sixteen, Cumulative Supplement to Compiled Statutes, p. 2388, the City of Newark was entitled to receive, through its city treasurer, certain sums of money computed at a certain percentage upon the gross receipts from trolley and jitney passengers within the city.

From these payments the purported supplement to the public utilities act seeks to relieve Public Service Coordinated Transport to the extent that it shall have transported without fare uniformed public officers while engaged in the performance of their public duties, and police officers of whatever grade or rank, acting as detectives, county detectives, or detectives attached to or connected with the office of the prosecutor of the pleas in any county while so engaged.

Upon this state of facts the Supreme Court denied the issuance of the peremptory writ, and from that judgment this appeal is taken.

LAW.

I.

The object of the act is not expressed in its title.

It was contended by the defendant below, and in this contention the Supreme Court agreed, that the case of *State* v. *Sutton,* 83 New Jersey Law 46 in the Supreme Court, 87 New Jersey Law 192 in the Court of Errors and Appeals,

and 244 U. S. 258 in the United States Supreme Court, is dispositive in favor of the defendants in this contention. It will be noted that in the Supplement of 1912, P. L. 1912, 235, which was the subject matter of the court's discussion in this case, under the title of a supplement to the public utilities act the Legislature imposed upon transportation companies the obligation of carrying without compensation certain police and other similar officers. The legislation was sustained in an opinion by Justice Swayze on three counts —first, that the presence of officers upon the company's vehicles afforded an indirect compensation by reason of the protection by his mere presence against pickpockets, and possible assaults upon passengers by company employees, which constituted aid to the company in the performance of its duty to passengers; in the second place, passing over the question of compensation, that the presence of public officers is frequently required in the execution of their duties to preserve peace, enforce ordinances and to prevent or detect crime, and that for this reason his free transportation might well be imposed in the exercise of the state police powers; in the third place, that the constitutionality of legislation is not always to be tested by abstract reasoning, but also in view of the habits and customs of the community.

After citing numerous cases embodying this principle, the court points out that the companies had made a practice prior to the adoption of the public utilities act voluntarily to carry these very officers free of charge, and that the enactment of the 1912 statute was brought about because it was contended that the public utilities act passed in 1911 had made such free transportation illegal, the illegality alleged arising from the provi-

sions of the last-mentioned act prohibiting free transportation and discriminatory fares. Under this reasoning for sustaining the act, Justice Swayze pointed out that the companies lost nothing either in possession or immediate anticipation at the time of incorporation, since the rights were acquired when the custom of free transportation was in vogue.

The Court of Errors and Appeals in sustaining the Supreme Court did not add anything to the grounds upon which the lower court's decision was based, and the United States Supreme Court's affirmance is upon the same grounds, adding only to them a reference to the reserved power in the Legislature to amend charters of incorporation. In order, then, that the case of *State* v. *Sutton* should be dispositive of the instant case, it is necessary to show that one of the three grounds upon which that decision rested is applicable to the present conditions.

The act now under review, while of identical title, is quite different in its operation and intent. Since *inter-alia* allows the transportation company to recover full fares for the carriage of officers, the question of the indirect compensation afforded to the transportation companies by the presence of the officers upon the cars, and which is the first of the three reasons, is obviously irrelevant to the present discussion. Passing for the moment over the second reason, it is equally obvious that the third reason, which relates to the historic practice of the transportation companies of granting free transportation to officers, is equally irrelevant since, while the 1912 act was held to be sustainable upon this historic principle, the 1929 act ignores the historic principle, and if valid would restore the companies

to the financial position which they claim to have held after the passage of the original public utilities act and prior to the passage of the 1912 act. If then *State* v. *Sutton* is to be held to be a precedent, it must be in view of the second ground set forth in Justice Swayze's opinion. This ground, briefly stated, was that the imposition upon the company of the obligation to carry free of charge the specified officers was an exercise of the police power of the state as against the transportation companies.

It cannot be doubted, nor do we intend to argue, that in the exercise of the police power the state may impose certain obligations and enforce certain exactions not only against private corporations but also against local governmental instrumentalities, but because of this reserved right in the state there is no power in the Legislature to assert it except in accordance with the constitutional limitations placed upon that body. One of these limitations is that of Article Four, Section Seven, Paragraph Four, which requires that every act shall have but one object, which shall be expressed in its title.

The reasoning in the case of *State* v. *Sutton* was to the effect that in an act relating to public utilities an obligation fairly referable to the police powers of the state might be imposed upon a public utility, but the act of 1929 imposes no police power burden upon a public utility. It in effect relieves a public utility of such a burden theretofore imposed.

Let us not be understood to suggest that such relief may not be afforded a public utility under an act of similar title. If the Legislature has power to create, it necessarily has power to destroy. If the Legislature had seen fit to repeal

the Act of 1912, the exaction under the police power would of course have fallen with the repeal, but this is not what has been attempted by the 1929 act. Under it, a scheme of compensation is provided for the transportation company in relation to the carriage of officers differing from the compensation exacted of the general riding public, not in amount, but only the method of receipt. The method of receipt provided is that the various municipalities in which the officers chance to ride shall bear this cost.

It may well be that in the exercise of the police power the Legislature by a parity of reasoning to that set forth in the Sutton case might impose upon municipalities the burden of paying the cost of transportation of police officers and detectives within their boundaries, irrespective of the question whether the officers so transported were officers of the municipality or not. We believe that this point is arguable, but for the purposes of the present discussion we will assume the existence of such power in the Legislature. It is then, as the Supreme Court in its opinion intimates, only as an exercise of this power that such an imposition can be made, that court saying that it considers the question of unconstitutionality because of faulty title "is answered by the decision of the Court of Errors and Appeals in *State* v. *Sutton.*" But the Legislature may not, in an act relating to public utilities, decree the imposition of police power obligations upon municipalities. The fatal defect in the 1929 act lies not in its effort to relieve the transportation companies of the exaction theretofore made upon them, but in the fact that the exaction as an exercise of the police power is transferred to the municipalities.

The Supreme Court in its opinion and as a basis for following the Sutton case says:

> "It is to be borne in mind that the essence of the legislation has been held to be the furnishing of police protection. As was said in the Sutton case, 'The transportation of the officer is a subordinate incident to the police regulation, and of the power of the legislature to enact such a regulation there would seem to be neither room for doubt nor ground for denial.' It is difficult to distinguish, in point of constitutionality, between a statute that provides police protection within a municipality at the expense of a utility and one that provides police protection within a municipality at the expense of the municipality; that is to say it is difficult to understand how the former could be constitutional, and the latter, under the argument advanced by the relators, unconstitutional."

Dissevered from the question of the propriety of the title we believe the foregoing to be a sound statement of the law. Bearing in mind, however, the fact that the act which seeks to impose this obligation upon the municipalities is not entitled as related to municipalities, but as related to public utilities, it becomes clear wherein the Supreme Court has gone astray in its adoption without critical analysis of the Sutton case as a precedent.

It has been argued, and in this argument we agree, that the fund from which the municipalities are required to make this payment is itself the creature of the state, and that as the state has created it so the state may destroy it, or may determine the purposes for which the municipality shall use the fund thus created. While this is undoubtedly a fair statement of the law, that law is irrelevant to the present issue. Its irrelevance becomes at once apparent the mo-

ment the essential nature of the exaction is realized.

To realize the nature of the exaction certain fundamentals must be borne in mind which the form of the act tends to mask. In the first place, the deductions in favor of the transportation companies authorized by the act are in essence payments by the municipalities. It is no answer to this proposition to say that the fund from which the deductions are directed to be made is a creature of statute, and that by statute the whole of this fund, instead of a part only, might, in the discretion of the Legislature, be diverted from the municipalities. Under the existing legislation whereby the franchise taxes are imposed there is in effect a delegation by the Legislature to the several municipalities under appropriately entitled legislation of the state's taxing power. Indeed, so far as the City of Newark is concerned, not only are the payments made to it directly under the so-called Kates Act of 1916 in relation to motor busses, but the payments to it on account of trolley operations are likewise made directly to it by virtue of the provisions of earlier authorized ordinances, the provisions of which were saved by the Voorhees Franchise Enactment of 1903 as amended. In the instance of the busses or of the trolleys is there any intervention in the case of the City of Newark of any state agency for the collection of the franchise taxes? That they are taxes and are levied by virtue of the delegation of the taxing power by the state as much as are the ordinary property taxes appears from the language of the act itself, which refers to them as "a franchise tax or charges in the nature thereof."

In the second place, the taxes thus authorized to be levied are appropriated in part to a spe-

cific purpose, to wit, the transportation of officers, and to the extent of this appropriation both the Voorhees and the Kates franchise tax acts are effectually amended. Mr. Justice Garrison, speaking for the Court of Errors in the Sutton case, in sustaining the constitutionality of the 1912 act stated that that result did not follow "if the statute be regarded as a taxing act or revenue-raising measure;" but every taxing act, either explicitly or implicitly, involves not only revenue raising but revenue expenditure. Thus the amount to be raised by general taxation by municipalities is strictly limited to the municipal needs, and the expenditure of the moneys thus raised is confined to municipal purposes. If then an act concerning public utilities is not in appropriate title regarded as a taxing act or revenue-raising measure, such a title is equally inappropriate if regarded as a revenue-expending measure.

In the third place, the expenditures thus directed to be made are not confined to strictly municipal purposes. It will be noted that the imposition upon the municipality is to pay the fares of such police officers and detectives who are transported by the companies within the municipal boundaries irrespective of whether these officers are officers of the municipality thus paying or not. Specifically, in the City of Newark, which is at once the seat of the city and of the county government, the classification specifically referred to in the statute, to wit, "county detectives, or detectives attached to or connected with the office of the prosecutor of the pleas" imposes a very substantial burden, since all of this class of officers, whether assigned to matters within or without the city, commence their journeys at the county seat. Similarly the necessity

for police officers from time to time to attend sessions of the county courts brings them from the several adjoining municipalities to the county seat. In all of these instances, although the City of Newark may have no municipal interest in the public duties being performed by these officers, she is none the less subjected to the expense of their transportation. If, as has been before pointed out, in analogy to the reasoning of the Sutton case it be held that the presence of these officers within the city has value to the city as tending toward the preservation of the peace and the discouragement of crime, it must be conceded that the imposition of the cost of their transportation upon the city can only be justified, as it was in the Sutton case, as an exercise by the state of its police power. How an exercise of such a power as against the municipality can be brought about under an act concerning public utilities, it is hard to grasp. It is therefore respectfully contended that the second reason by which, in the Sutton case, the Act of 1912 was held to be constitutional is equally inapplicable to the present act of 1929 as are the first and third reasons earlier discussed, and that as a consequence the case of *State* v. *Sutton* is not a precedent for sustaining the 1929 act.

We submit that an act entitled "An Act Relating to the Public School System" could not constitutionally provide that from the moneys received by municipalities from trolley and bus franchise taxes a certain sum should be paid by the municipality into the funds of the local Board of Education; that to accomplish such a purpose the act would have to be entitled "An Act Relating to the Payment by Municipalities of Franchise Taxes for the Support of Public Schools" or some similar title which would indi-

cate that the legislation related not only to the schools but to the municipalities as well.

It was conceded by the defendant below that the act under question so far as the obligation imposed upon the city was concerned is precisely the same in effect as though it had provided that the fares of all police officers, detectives, etc., riding within the municipal boundaries should be paid by the municipality. Such has been our contention throughout. To quote from the brief below:

> "If the act had merely provided that police fares must be charged to municipalities and then declared that the charge therefor should be paid by the city out of any unexpended balance, or had made no provision as to what funds the charge should be paid from, in logic and in law the situation would have been exactly the same, so far as any impairment of the Voorhees or Kates Acts were concerned."

It is submitted that an imposition of this character upon the municipalities in relation to the payment of fares of officers, state officers though they may be, who are not in their direct service and over whom they have no control, is so directly a regulation of the internal affairs of the municipalities as not to be capable of being brought about under an act entitled "An Act Concerning Public Utilities."

Concededly in practical effect it makes no difference whether the funds validly finding their way into municipal treasuries under existing legislation are generally subjected to a charge or whether specific funds are subject to a deduction. In either event, the total of available municipal income would be reduced to the same extent. It is none the less true, however, that the amount of moneys payable specifically by the

utilities corporation under the Voorhees and Kates Acts is reduced by the extent of the imposition for officers' transportation and that to this extent the act in question amends those two acts as effectively as an amendment to that effect could do.

II.

It is unconstitutional as violative of Article IV, Section VII, Paragraph Twelve of the State Constitution.

The effect of the act is to levy upon municipalities an arbitrary and undefined contribution for the benefit of counties and other municipalities. The language of the act does not limit the credits granted the company for the transportation of officers to credits for the transportation of officers of the municipality paying. Thus if there be transported in the City of Newark police officers and detectives from other municipalities, or if county detectives and prosecutor's detectives are transported, the City of Newark is forced to pay for this transportation if it be within her territorial limits.

As to other municipalities, the City of Newark can have no obligation to contribute to the maintenance of any of their departments. As to the county, so far as the transportation is of Essex County officers, the City of Newark is required through its tax levy to pay its proportion of the county expenses. As to other counties, it has not even this obligation. The city's payment of its share of county expenses through the tax levy constitutes that assessment for taxes under general laws and by uniform rules according to its true value which the constitution requires. When to this obligation there is added a further

obligation to pay out of a specific fund to which the city is entitled under other statutes a part of the costs of maintenance of the county and of other municipalities, uniformity of taxation ceases and the city is unconstitutionally mulcted and one public agency has public moneys taken from it and paid to another.

In order to raise the moneys thus taken it becomes necessary for the City of Newark to the extent of this imposition to increase the burdens upon its taxpayers, so that upon them is placed not only the burden of paying sufficient taxes to maintain the city government of Newark, but some indeterminate amount in excess to make up to the city treasury the moneys withheld under this act.

In *Essex County Park Commission* v. *West Orange,* 75 New Jersey Law 376, at page 381, the Supreme Court passing upon the validity of an act repealing the exemption of county park lands but retaining the exemption as to improvements thereon indicated that the effect was merely that above pointed out—to wit, the taking of money from one public agency and the payment thereof to another. The Court of Errors and Appeals, however, in the same case, 77 New Jersey Law 575, at 576, uses this significant language in reference to the Supreme Court opinion:

> "This court is unwilling to sustain the act upon the idea intimated in that opinion, that a tax, strictly speaking, may not be involved, but that in substance the law provides a method of enforced contribution exacted by the state from one public agency toward the support of another public agency, requiring public moneys to be taken from one public agency and paid to another. It may well be doubted whether the Legislature has such power.

> The enactment which is a supplement to the tax act deals with taxation and in terms imposes taxes upon certain public lands. The law, therefore, regards it as a tax and it must be dealt with as a tax."

The repeal of an exemption having thus been held to be a tax, so must an enforced payment by a municipality to the support of another public agency be regarded as a tax, and as in the Park Commission case the Court of Errors and Appeals held that a discriminatory exemption violated the constitutional requirement of uniformity in taxation so must a contribution of this type be held violative of the constitution. Moreover, the disapproval by the Court of Errors and Appeals of the attitude of the Supreme Court in the Park Commission case in relation to the transfer of funds from one public agency to another, though expressed in the form of a doubt, was a direct reversal of the lower court on this question. It is therefore respectfully submitted that the imposition of this burden is violative of the uniform taxation provision of the constitution.

III.

The act is unconstitutional as violative of Article I, Sections Nineteen and Twenty.

Under these sections the city is prohibited from giving any money or property, or from loaning its money or credit to or in aid of any corporation and from appropriating any money to or for the use of any corporation.

In *Jersey City* v. *North Jersey Street Railway Co.*, 78 New Jersey Law 72, this question and answer is set forth:

> "Is it competent for a municipality without express legislative authority to give

away to a private corporation a portion of the city's revenues, not merely revenues then due but revenues to accrue in the future for years thereafter. To state this question is to answer it. The doubt has never been whether such an act required express legislative authority, but whether it was even within the power of the Legislature to authorize such a donation. Since the decision in the Loan Association *v.* Topeka, 20 Wall. 655, it has been thought beyond the power of the Legislature itself to authorize municipal aid to private corporations, and certainly such aid has been impossible since the amendments to our constitution in 1875, Article One, Sections 19 and 20. I cannot distinguish in principle between direct pecuniary aid and aid by means of a release from a pecuniary burden."

Similarity in regard to the statute under consideration, while it may be argued that as to such uniformed public officers and detectives as are in the employ of the City of Newark, the imposition upon the city of a duty to compensate the transportation company for their carriage is in no true sense a donation but is founded upon a *quid pro quo* within definition of the Court of Errors and Appeals in *Morris and Essex Railway* v. *Newark,* 76 New Jersey Law 555, as to that portion of the credit, however, which represents the cost for transporting officers of other municipalities or of a county there is no *quid pro quo* moving to the City of Newark, nor is there any moral element such as that controlling in the case last cited. In no way can it be logically asserted that there is any moral obligation on the part of the City of Newark aside from its tax contribution to the County of Essex, to pay anything for the maintenance of county officers, while as to payments made for transportation of the officers of other municipal-

ities, it cannot even be asserted that the city may obtain some incidental advantage. As far as the city is concerned, therefore, although it may be argued that the Public Service Coordinated Transport had rendered services which would support a payment by a municipality for which such services were rendered all credits given to the company as against the City of Newark for services rendered the county or other municipalities are, as to the City of Newark, without consideration to support them and become mere gifts.

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New Jersey Court of Errors and Appeals

City of Newark, in the County of Essex, and John Howe, City Treasurer of the City of Newark, *Appellants,* *vs.* Public Service Coordinated Transport, a corporation of the State of New Jersey, *Respondent.*	*On Mandamus.* *On Appeal from Supreme Court.*

BRIEF OF RESPONDENT.

Before entering upon a discussion of the points involved in this controversy, the Court's attention must be drawn to the stipulations made in open court in the Supreme Court at the oral argument of this case by counsel for the appellants and for the respondent. It was stipulated that the State of Case should be amended so as to strike therefrom all the affidavits which had been mistakenly included therein, and to add thereto a joinder in demurrer which had been by oversight omitted therefrom. The State of Case therefore consists only of the Alternative Writ of Mandamus, respondent's Demurrer thereto, and appellant's Joinder in Demurrer.

It was agreed that the only issue involved is as to whether Chapter 324 of the Laws of 1929 is constitutional. This act reads as follows:

> "A Supplement to an act entitled 'An act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved

April twenty-first, nineteen hundred and eleven.

"BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey.*

"1. On and after the passage of this act each public utility, as defined in the act to which this is a supplement, operating any street railway, traction railway or auto bus, shall grant transportation to uniformed public officers while engaged in the performance of their public duties, or police officers of whatever grade or rank acting as detectives, county detectives or detectives attached to or connected with the office of the prosecutor of the pleas in any county in this State while engaged in the performance of their public duties, whose duties require police duty to be performed without uniform, without the collection of fares from such public officers; *provided, however,* that for such transportation an amount equal to the lawful fares shall be considered a credit on account of any franchise tax or charges in the nature thereof payable or apportioned by law or ordinance to any municipality wherein such transportation takes place.

"2. All acts and parts of acts inconsistent with this act are hereby repealed, and this act shall take effect immediately.

"Approved May 6, 1929."

Appellants' brief alleges this act to be unconstitutional because of infringement upon one or more of three sections of the Constitution of the State of New Jersey. These three sections are:

First. Article IV, Section VII, paragraph 4, which reads as follows: "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall

embrace but one object, and that shall be expressed in the title."

Second. Article IV, Section VII, paragraph 12, which reads as follows: "Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

Third. Article I, Sections 19 and 20, which read as follows: "19. Municipal aid to private corporations. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation."

"20. State or municipal aid to private corporations, etc. No donation of land or appropriation of money shall be made by the state or any municipal corporation to or for the use of any society, association or corporation whatever."

The majority, if not all, of appellants' points are unsound, because they fail to take note of certain fundamental conceptions, and it is asserted with entire confidence that no one of the cases cited in appellants' brief is a direct authority in favor of the proposition in the brief in support of which it is avouched.

Some of the fundamental conceptions referred to are as follows:

A. Only in a plain case will a statute be declared void because its title does not express the object of the law. *Richards* v. *Hammer,* 42 N. J. L. 435, aff'd 44 *id.* 667; *State ex rel. Walter* v. *Union,* 4 Vroom 350. The rule is well

and firmly established that an act of the legislature will not be declared void by the courts if its unconstitutionality is in any way doubtful. *Attorney General* v. *McGuinness,* 78 N. J. L. 346, 377; *Hudspeth* v. *Swayze,* 85 *id.* 592, 609.

B. Appellants have entirely ignored the legislative history and the judicial decisions bearing upon the subject-matter of the legislation now under scrutiny. No adequate consideration of the subject can be had unless such history is taken into account. I shall therefore briefly outline the course of legislation upon this subject and the judicial decisions thereon, for the information of the Court.

I shall not weary the Court by going back too far in the history of the legislation concerning the topic now under review, but shall point out that the Board of Public Utility Commissioners was created by an act which will be found in P. L. 1911, page 374, approved April 21, 1911, the title of which act is, "An act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers." Prior to 1911 there had been in existence in the State of New Jersey a Board of Railroad Commissioners, which had been created by "An act to create a Board of Railroad Commissioners for the State of New Jersey, and to prescribe its powers and duties," approved May 15, 1907. In 1910, by Chapter 41 of the Pamphlet Laws for that year, page 56, a further amendment and supplement to this Railroad Commissioners Act, enlarging the powers of the Commission and extending its jurisdiction over the other public utilities of the State, was passed. In the ninth section of that act it was enacted, *inter alia,* "and no such public utility, as herein

defined, shall hereafter give, grant or bestow upon any local, municipal or county official any discrimination, gratuity or free service whatsoever, but nothing herein contained shall prevent the free transportation of uniformed public officers while engaged in the performance of their public duties."

Then came the present Utility Act, hereinbefore mentioned, passed in the year 1911, under the title, "An act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers," and it was enacted in paragraph (g) of section 18 thereof that "No public utility as herein defined shall: * * * (g) Hereafter give, grant or bestow upon any local, municipal or county official any discrimination, gratuity or free service whatsoever, but nothing herein contained shall prevent the entry into any public conveyance or in or upon the property of any such public utility as herein defined of any such official in the pursuit of his public duties in connection with the particular conveyance or property so entered by him, upon exhibiting his authority so to do." And see especially section 41 of this Act covering the whole question of franks and passes.

It will thus be observed that up to this time public utility companies might make a charge for transporting officers. In 1912 an act was passed, entitled, "A Supplement to an act entitled, 'An act concerning public utilities, to create a Board of Public Utility Commissioners and to prescribe its duties and powers,' approved April twenty-first, nineteen hundred and eleven." This act may be found in P. L. 1912, page 235,

with the notation "Free transportation for police of all grades," and reads as follows:

> "1. On and after the passage of this act each street railway company or corporation referred to in the act to which this act is a supplement shall grant free transportation of uniformed public officers while engaged in the performance of their public duties, or police officers of whatever grade or rank acting as detectives, county detectives, or detectives attached to or connected with the office of the prosecutor of the pleas in any county in this State while engaged in the performance of their public duties, whose duties require police duty to be performed without uniform."

This act was challenged in court and universally sustained as a police measure. The decisions validating the act will be found in the following cases: *State* v. *Sutton,* 83 N. J. L. 46; *State* v. *Sutton,* 87 N. J. L. 192; *State* v. *Sutton,* 244 U. S. 258.

That a supplement is the proper means of introducing such change as was effected in the law by the above-mentioned statute of 1912 is clear from the decision of our Court of Errors and Appeals in *Schmalz* v. *Wooley,* 57 N. J. Eq. 307, where Mr. Justice Dixon, speaking for the Court, said,

> "In our legislation a formal supplement to an act is not necessarily a statute which supplies defects in its predecessor. It may be one that abrogates the preceding enactments and substitutes radically different provisions. Hence the mere calling of an act a supplement to another designated act expresses nothing of its object."

The law as contained in the statute of 1912 remained without change until the statute now under review was passed in 1929. The title to the Gopsill Act which is challenged in this

proceeding is precisely the same as the title of the act of 1912 which was validated in the case of *State* v. *Sutton, supra,* in our Supreme Court, Court of Errors and Appeals, and the Supreme Court of the United States, which title is, "A Supplement to an act entitled, 'An act concerning public utilities; to create a board of public utility commissioners and to prescribe its duties and powers,' approved April twenty-first, nineteen hundred and eleven." This this title is constitutional for legislation of this character was definitely determined by our Court of Errors and Appeals in *State* v. *Sutton,* 87 N. J. L. 192, at page 195, where Mr. Justice Garrison, speaking for the unanimous Court of Errors, said, in holding that statute constitutional: "Moreover, while police regulation of public utilities *is clearly within the object expressed by the title,* 'An act concerning public utilities,' the same can hardly be said if the statute be regarded as a taxing act or revenue-raising measure."

While it would seem that the above resume of the history, both legislative and judicial, of the subject-matter involved in the Gopsill Act is completely dispositive of the case, in favor of the respondent, it is deemed proper to still further vindicate the act and its title against the challenge of appellants.

C. "The title of a public statute may properly be used to denote the law embodied in the statute as modified by its amendments and supplements." *Drew* v. *West Orange,* 64 N. J. L. 481; *State* v. *Cooney,* 72 N. J. L. 76. Hence the supplement (Gopsill Act) modifying the act of 1911 modified that act as supplemented in 1912. "An act and its supplement are to be construed

as one law." *Van Riper* v. *Essex Road Board,* 9 Vroom 23; *Farrell* v. *State*, 54 N. J. L. 421; and the effect is to give it operation in its new form as if so drawn originally. *Barnaby* v. *Barclay,* 60 N. J. L. 158.

It is deemed illuminating to suggest that the Fielder grade-crossing act, with which the Court is entirely familiar, was entitled, "A Supplement to an act entitled 'An act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers,' approved April twenty-first, one thousand nine hundred and eleven." The sufficiency of this title and its immunity from attack under the section of the constitution above mentioned is vindicated by the decision of our Court in passing upon the grade-crossing case, *Erie R. R. Co.* v. *Public Utility Commrs.,* 89 N. J. L. 57, at page 87.

That act (Fielder Act) provided for the division of expenses of abolition between the railroad and a street railway using such crossings; for the bearing of expenses of re-laying, etc., of municipal pipes, conduits, or subways by the municipality owning the same; also of the expense of curbing, paving and flagging necessary as a result of changes of grade; also for the bearing of expense by telegraph, telephone, gas, electric light, etc., companies for changing grade. In his opinion, Mr. Justice Garrison said:

> "Point VII is an attack upon the title of the original Public Utility Act of 1911, and upon the *duality* of the objects alleged to be embraced in that act as supplemented by the Fielder Act of 1913.
>
> "The title of the original act expresses broadly and inclusively the object of the statute; it does not express the means and

methods of attaining that object, but this is not required. *Bumstead* v. *Govern,* 47 N. J. L. 368; affirmed, 48 *Id.* 612; *Hickman* v. *State,* 62 *Id.* 499; affirmed, 63 *Id.* 666.

"As was said by this Court in *Moore* v. *Burdett*, 62 N. J. L. 163, 164: 'The object of a law must not be confused with its product. * * * The object of every law, by force of the constitution must be single and be expressed in the title of the law; the product may be as diverse as the object requires and finds its expression in the terms of the enactment only. In fine, the title of an act is a label not an index.' The statute has, in a constitutional sense, a single object. To attain this object it enacts various methods and matters so related to such object and to each other as to effectuate a single purpose. The inclusion of such interrelated matters is not the intermixing of things that have no proper relation to each other, hence the statute as a whole has a single object. *Payne* v. *Mahon,* 44 N. J. L. 213; *Newark* v. *Mt. Pleasant Cemetery Company,* 58 *Id.* 168."

From the above it will be observed that notwithstanding the incidence of the Fielder Act upon various classes of instrumentalities, such as railroads, street railways, telegraph and telephone companies, electric light and gas companies, water companies, and municipal corporations, the title to that act, which is identical with the title in the case now *sub judice,* was held to be sufficient and constitutional. This case was affirmed under the same name by our Court of Errors and Appeals in 90 N. J. L. 672, on the opinion of Mr. Justice Garrison in the Supreme Court, and was affirmed by the Supreme Court of the United States in 254 U. S. 394.

I do not desire to draw out this brief interminably, since enough has already been said to

show the unsoundness of the attack upon the constitutionality of the act involved in the instant case, but I may point out that the Utility Act itself provides in its 25th section for the filing by municipalities of statements of their utility operations; and without mentioning in the title anything with respect to applications to Courts for relief, provides in the 27th section for an application to the Supreme Court or any Justice thereof for relief against recalcitrant witnesses; further, without purporting to amend or supplement the Crimes Act, makes it—in the 34th, 35th and 36th sections of such act—a misdemeanor to perform acts prohibited by the act, and to fail to perform duties enjoined by the act, and for a utility to perform acts prohibited by the act. The Public Utility Act, without any mention thereof in the title, provides in Section 38 for a review of the orders of the Board by certiorari from the Supreme Court, and also for an appeal from the judgment of the Supreme Court upon certiorari to the Court of Errors and Appeals. In its 39th section it provides for the effect of a certiorari as a stay.

I may also point out that under the same title the legislature in 1914 (P. L., page 305) provided for the transportation by any railroad company of ministers of religion, and sisters, or nuns, etc. The Utility Act also was supplemented in 1914 (P. L., page 492) by a statute to regulate the use of the telephone or telegraph line of one company by another; and in 1915 (P. L., 682) for joint freight rates on steam and trolley roads, and under the same title in 1915 (P. L., 859) for the right of one street railway company to use the property of another.

I shall not draw out this catalog of supplements, since those mentioned are sufficient to indicate the character of and custom in our legislature in this particular.

> "When an act is supplemental to a former act or amendatory thereto, if the subject of the original act is sufficiently expressed in its title, and the provisions of the supplement are germane to the subject of the original, the general rule is that the subject of the supplement is covered by a title which contains specific reference to the original." 36 Cyc. 1059; *Seaside Realty Co.* v. *Atlantic City,* 74 N. J. L. 178; *Rahway Sav. Inst.* v. *Rahway,* 53 N. J. L. 48.

It is not necessary that the title of the amendatory act should specify the particular sections of the act amended, 23 Am. & Eng. Encyc. Law, p. 268, Statutes. And the law is perfectly settled that "the title of the amending act need not indicate the nature of the amendment." 36 Cyc. 1030, 1031.

In *People* v. *Whitlock,* 92 N. Y. 197, a case involving this very question, Danforth, *J.,* said:

> "The statute of 1881, therefore, is not *broader* than its title, and does not contravene the constitutional provision upon which the appellant relies. The object of that provision is fairly answered by a title giving notice to whomever reads that legislation is impending which, by amending the act referred to, *might* touch upon the subject-matter of *any* of its provisions."

But the *mere* fact that the *title* is *broader* than the act itself does not invalidate the act. It is only when the title is so general as to give *no* information or *mis*information, so as to *clearly* contravene the constitutional provision, that the act is invalidated. 36 Cyc. 1032. Such was the situation involved in the cases of *Waln* v. *Bev-*

erly, Coutieri v. *New Brunswick,* and others cited on appellants' brief.

The title of the Gopsill Act is, "A Supplement to an act entitled 'An act concerning public utilities; to create a board of public utility commissioners and to prescribe its powers and duties'." Does this title fail to inform or misinform; is it false or deceptive; is the supplement not germane to the act supplemented? That it is an act concerning public utilities is indubitable; that it directly touches and modifies the original act is equally indisputable. The matter of free or paid carriage of police officers has been the subject of legislation, under this title, in New Jersey since 1911, that is to say, for twenty years, and there has never been a moment in the twenty years mentioned that the subject has not been regulated by legislation under that precise title; consequently, there neither is nor could be falsity or deception in using such a title to caption such legislation. Not only so, but such legislation has been passed on by our Courts and the United States Supreme Court, under that title, and been held valid.

On the oral argument of this case, in the Supreme Court, Mr. Justice Donges called attention to a decision which he had made at Circuit, which had been affirmed by the Court of Errors and Appeals, where the matter involved was the inclusion under the Practice Act of a provision allowing third parties to sue. This case is an admirable example of the propriety of a title which takes note of customary usage in the particular involved.

I have reserved for the last the citation of a case which is conclusive against the objection raised under Point I in appellants' brief, and I

ask no indulgence for quoting therefrom copiously and pointing its application.

The constitutional objection, based upon Article 4, Section 7, paragraph 4 of our constitution, which is phrased as follows: "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title," would hardly have been raised by the City of Newark if it had borne in mind its past experience with that precise question in our Court of Errors and Appeals, in the case of *Newark* v. *Mount Pleasant Cemetery Co.,* 58 N. J. L. 168. Having the decision of the precise point raised in this case settled antagonistically to it in that case, it would seem the City of Newark would have trodden the arena of contest with warier feet.

In *Newark* v. *Mount Pleasant Cemetery Co., supra,* the facts were extremely simple. The company was incorporated under special act of January 24, 1844. A supplement of February 9, 1861, exempted it from taxes and assessments until the board of chosen freeholders otherwise directed. June 19, 1891, the freeholders resolved that thereafter the cemetery association should be subject to taxes and assessments. An assessment for repaving was subsequently imposed. An act of April 9, 1875, enacted that "the cemetery lands and property of any association formed pursuant to this act or otherwise incorporated" should be exempt from all public taxes, rates and assessments. The title to this act was "An act to authorize the incorporation of rural cemetery associations and regulate cemeteries."

Justice Magie, writing the unanimous opinion of our Court of Errors and Appeals, dealt with this constitutional objection in the following language, which is entirely dispositive of the questions raised in the case now *sub judice,* under the constitutional provision above mentioned:

> "It is first argued that the title of the act of April 9th, 1875, is not in conformity to the constitutional requirement that 'to avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.' *Const., Art* 4, *Sec.* 7, *par.* 4.
>
> It is insisted that the law in question fails to accord with this provision of the constitution—first because it embraces two objects.
>
> "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.
>
> "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* v. *Mahon,* 15 Vroom 213. The same construction has been repeatedly given it in the Supreme Court and in the Court of Chancery. The cases will be found collected in the able opinion of the learned Chancellor

in *Stockton* v. *Central Railroad Co.*, 5 Dick. Ch. Rep. 52.

"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 object be one, and the various provisions of the statute tend to carry it out, and are not incongruous or improperly related, this requirement will have been complied with.

"Turning to the Act of April 9th, 1875, I find in its provisions a clear and definite general object, viz., the establishment and maintenance of cemeteries for the burial of the dead. Moreover, I find that its provisions, though various, all tend to promote that object and are not improperly related to each other. Thus it first authorizes the formation of associations to take, hold and use land for cemetery purposes and regulates the associations thus to be formed. The tendency of legislation had for many years been toward the creation of corporations by general rather than by special laws. On the preceding day the legislature had submitted to the people the amendment to the constitution, afterward adopted, which prohibits the grant of corporate powers otherwise than by general laws. But while thus authorizing the acquisition of new corporate powers to effectuate the general object of the act, it was within legislative knowledge that cemeteries for the burial of the dead had previously been established by corporations created by special laws or the general law of 1851 hereafter mentioned, and it was obvious that the cemeteries thus established, and those which might thereafter be established by corporations formed under this act, needed legislation, in many respects at least, identical in character. Provisions making such regulations with respect to cemeteries established or to be established, tended to effectuate the object of the act and are

not improperly related to the provisions for the incorporation of associations for the establishment of such cemeteries. In my judgment the object of the act is single within the meaning of the constitution.

"It is next contended that the object of the act, so far as it has a purpose to exempt from public burdens cemeteries incorporated under special laws, is not expressed in the title, and it is therefore out of conformity with this provision of the constitution. The insistment is that the words 'and regulate cemeteries' are not broad enough to cover a grant of exemption from taxes and assessments, and that if the act is constitutionally valid in other respects, it fails and is invalid in that respect. *Rader* v. *Union,* 10 Vroom 509; *Bumstead* v. *Govern,* 18 *Id.* 368; *S. C.,* 15 *Id.* 612. But this argument is based upon a too limited meaning of the word 'regulate,' which is conceived to be applicable only to the imposition of restrictions. But the word is of far broader meaning and includes all direction by rule of the subject-matter. As applied to property devoted to cemetery purposes, it would naturally include, not only the making of rules for its management by those having it in charge, but also the making of rules governing the conduct of others in respect thereto and of the public in respect to public burdens thereon.

"The result is that the Act of April 9th, 1875, is not out of conformity with the clause of the constitution in question."

If the word *regulate* will be given this amplitude of meaning, what shall be said of the word *concerning,* in the statute now under consideration? This question is answered once and for all by our Court of Errors and Appeals in *State* v. *Sutton,* 87 N. J. L. 195, where Mr. Justice Garrison, speaking for the unanimous Court, and speaking of the title of the very act now

under consideration as being appropriate to legislation requiring street railway companies to grant free transporation to police officers, said:

> "Moreover, while police regulation of public utilities is *clearly* within the object expressed by the title, 'An Act concerning public utilities,' the same can hardly be said if the statute be regarded as a taxing act or revenue-raising measure."
>
> * * * * * * *

I pass now to a consideration of the other phases of the argument raised by relators.

The *City* has no *primary* ownership in or control over the streets. These are in the *State,* and ownership, trusteeship, or control resides in the State, and if it shall have been delegated to one of its municipal corporations, which are merely arms of the general government for the convenient administration of local affairs, may be resumed by the State at its pleasure.

These franchise taxes are expressly stated in the acts themselves to be for the use of the streets, and therefore *primarily* the tax is a State tax. The State could appropriate the entire amount of these taxes to the State Highway Board, the schools, or any other non-municipal purpose, and no city could legally complain. Neither the city nor its citizenry has any primary right to this tax money. *The State gives it and the State can take it away.*

The police is a State function. The mere fact that offiecrs are recruited from and paid by the cities does not make it less so. The State could have provided that the bills for transportation of the police should be presented to the State Comptroller and paid by the State before any apportionment of the tax money should be made

among the municipalities, and no city would have had legal ground of complaint, since the City has no primary claim either to the street or to the tax, but the State has.

Furthermore, while policemen may be localized in Jersey City, they are State officers, and perform police functions in Newark, while riding in the cars in Newark. The performance of police functions in any part of the State benefits the whole State. In the case of *State* v. *Sutton,* 83 N. J. L. 49, Mr. Justice Swayze, speaking for the Supreme Court, in validating the act requiring public utility companies to carry policemen on duty free, made use of the following language:

> "*Second.* The statute of 1912 may fairly be regarded as an exercise of the police power of the State. Policemen are frequently required to be on street cars in the execution of their duties to preserve the peace, to enforce ordinances and to prevent or detect crime. It would be difficult to say that the mere presence of a police officer might not be of value for securing these objects, and it would be difficult if not impossible to distinguish in principle between his right, for example, to be on a crowded car to arrest pickpockets and his right to be on a car not crowded to enforce the ordinance against spitting. If he has the right to be there for these purposes it is impossible to say that his services may not at any time be required to prevent violations of law; at any rate, the legislature might reasonably think so, and legalize his presence on the car without payment of fare."

If the money from the tax were paid to the utility company thru a State agency, it would result in the same or a greater financial inequality of burden among the municipalities. Such inequality is not ground for declaring the procedure unconstitutional. It would not be so even

if the question were one of taxation, since such incidental inequalities are inherent in all human ventures. Certainly the procedure does not violate Article IV, Section VII, paragraph 12 of the State constitution, "that *property* shall be assessed for taxes under general laws and by uniform rules according to its true value." There is no attempt here to subject any *property* to taxation, and the law is general and the rule of payment uniform. This section has no application whatever. The Gopsill Act does not seek to relieve the company from payment of franchise taxes; on the contrary, it provides a mode by which payment may be made. The Gopsill Act did not in any way impair the force of either the Voorhees Act or the Kates Act under which the franchise taxes were laid and apportioned. After the passage of the Gopsill Act such taxes were levied and apportioned precisely as theretofore. Such taxes were not levied upon the citizens of the City or upon their property. They were levied by the State for the use of the roads, and apportioned by mileage. After the passage of the Gopsill Act the same sums were due under the franchise tax acts as tho the Gopsill Act had never been passed. The utility owed the same sums for taxes under the Tax Acts. All the Gopsill Act accomplished in this respect was to enable the utility to claim a credit for service rendered. Indeed the Gopsill Act, far from changing or impairing the tax acts, confirmed and approved them. It recognized the obligation to pay the entire sum due, and authorized utilities to make payment by claiming credit to the extent of service actually rendered.

If the act had merely provided that police fares must be charged to municipalities and then declared that the charge therefore should be paid

by the City out of any unexpended balance, or had made no provision as to what funds the charge should be paid from, in logic and in law the situation would have been exactly the same, so far as any impairment of the Voorhees or Kates Acts were concerned.

These franchise taxes are not levied by the cities, but by the State under State statute, and whatever the cities are given therefrom is by the graciousness of the State. It is the State's money, and is not paid by the City or the citizens, nor is it collected from the property of the citizens. I reiterate, that the State gave and the State can take away—all or any part thereof.

The cases cited on appellants' brief—*Essex County Park Comm.* v. *West Orange,* 75 N. J. L. 376, at p. 381, and the same opinion in 77 N. J. L. 575, at p. 576—have no bearing whatever upon the case now *sub judice.* That case was a tax case, and had to do with contributions *exacted* by the State from one public agency toward the support of another such agency. The Court very properly said, that the law regarded the exaction as a tax and dealt with it as a tax; and the Court of Appeals based its decision upon a ground entirely alien to the considerations urged by the appellants' brief in this case, and that case is entirely inapposite to this.

* * * * * * * *

It is perfectly settled that the franchise and gross receipts taxes are *license,* not *property,* taxes, and that hence the constitutional rule as to equality and uniformity in taxation has no application to them. See *Salem Co.* v. *State Board, etc.,* 97 N. J. L. 388. This case also clearly states the rule that the phrase "uniform rules" relates not to the agencies and methods employed in

the assessment and collection of taxes, but only to the basic rules for taxation, which settle how the public burden is to be distributed, including the designation of the property that is to contribute and the rate or ratio by which the taxes are to be laid and apportioned.

I have argued this case in this court as fully as I argued it in the Supreme Court, and have stated the authorities supporting the principles asserted by me with the same fullness here as there. This perhaps was unnecessary, since much of the ground asserted by the appellants has been abandoned by them, and most of the grounds asserted by the Supreme Court in its opinion have likewise been admitted to be sound.

A careful reading of appellants' brief will show that the only question argued under Point One will be found on page six of appellants' brief; it is stated as follows:

> "But the Legislature may not, in an act relating to public utilities, decree the imposition of police power obligations upon municipalities. The fatal defect in the 1929 act lies not in its effort to relieve the transportation companies of the exaction theretofore made upon them, but in the fact that the exaction as an exercise of the police power is transferred to the municipalities."

And again on page seven, after having quoted the following excerpt from the opinion of the Supreme Court in this case:

> "It is to be borne in mind that the essence of the legislation has been held to be the furnishing of police protection. As was said in the Sutton case, 'The transportation of the officer is a subordinate incident to the police regulation, and of the power of the legislature to enact such a regulation

> there would seem to be neither room for doubt nor ground for denial.' It is difficult to distinguish, in point of constitutionality, between a statute that provides police protection within a municipality at the expense of a utility and one that provides police protection within a municipality at the expense of the municipality; that is to say, it is difficult to understand how the former could be constitutional, and the latter, under the argument advanced by the relators, unconstitutional''—

counsel for appellants proceed to say that ''dissevered from the question of the propriety of the title we believe the foregoing to be a sound statement of the law. Bearing in mind, however, the fact that the act which seeks to impose this obligation upon the municipalities is not entitled as related to municipalities, but as related to public utilities, it becomes clear wherein the Supreme Court has gone astray in its adoption without critical analysis of the Sutton case as a precedent.''

The foregoing excerpts state with great clearness the precise point upon which appellants attempt to rely in the instant case. What they seem to entirely lose sight of is that the essence of the legislation of 1929 is still ''the furnishing of police protection,'' and that ''the transportation of the officer is a subordinate incident to the police regulation.'' It still remains true that the act is one to *regulate* utilities, by changing an existing relation and substituting therefor a new one.

This purpose is clearly accomplishable under the title, ''An Act concerning public utilities,'' etc. The word *concerning* has no less amplitude than the word *regulate,* and in the before-cited case of *Newark* v. *Mount Pleasant Cemetery Co.,*

58 N. J. L. 168, Mr. Justice Magie clearly showed in his opinion, which voiced the unanimous opinion of the Court of Errors and Appeals in this State, that under "An Act to authorize the incorporation of rural cemetery associations and regulate cemeteries," legislation looking to the exemption from public burdens of the property of cemetery corporations, incorporated under special laws, may be enacted. This case is a clear and conclusive authority upon the subject under consideration in the instant case.

Other cases establish the doctrine that "The constitution does not prohibit the union in one act of several subjects, 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." This is laid down in *Easton and Amboy R. R. Co.* v. *Central R. R. Co.*, 52 N. J. L. 271-272, and a copious citation of authorities in support thereof will be found therein.

It should also be noted at this time that there is not a single provision of either the franchise or the license tax acts involved which is infringed by the act of 1929. These taxes are laid in the same way, assessed in the same way; the same amount of taxes is required to be paid

by the utilities concerned as was required to be paid before the act of 1929 was passed. All that the statute does in its regulation of the public utilities involved is to affirm the validity of both franchise tax acts involved, and the duty of the utilities concerned to make the payments which are due and assessed thereunder, but allows such utilities in making such payments to claim a credit on account thereof for the carrying of police officers and others designated in accordance with the provisions of the 1929 act.

Inasmuch as said police officers and others in the execution of their duties are carrying on a State function, and inasmuch as the State itself has created this tax and directed the channel into which it shall go, and inasmuch as the State having given, is authorized to take away what it gave, and inasmuch as this money thus permitted to be deducted under the act of 1929 is not derived from taxation upon the property of the citizens of the City—it is not strange to find appellants in their brief on page seven thereof saying, "It has been argued, and in this argument we agree, that the fund from which the municipalities are required to make this payment is itself the creature of the state, and that as the state has created it so the state may destroy it, or may determine the purposes for which the municipality shall use the fund thus created. While this is undoubtedly a fair statement of the law, that law is irrelevant to the present issue."

Appellants then proceed in their brief to state that such irrelevance becomes at once apparent the moment the essential nature of the exaction is realized.

The first position which appellants assume in their effort to display such alleged irrelevance is that under the existing legislation whereby the franchise taxes are imposed there is in effect a delegation by the Legislature to the several municipalities under appropriately entitled legislation of the State's taxing power. * * * That they are taxes and are levied by virtue of the delegation of the taxing power by the State as much as are the ordinary property taxes, as appears from the language of the act itself, which refers to them as "a franchise tax or charges in the nature thereof."

It is submitted that a reading of the acts will demonstrate that there has been no delegation of the State's taxing power to the municipalities; and that they bear not the slightest resemblance to the taxes levied by virtue of the delegation of the taxing power in the same manner as ordinary property taxes. They are mere license taxes and do not come under the constitutional provision to the effect that "property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." I have already cited one case in support thereof; I also refer to *North Jersey St. Rlwy. Co.* v. *Jersey City,* 73 N. J. L. 481; and *State* v. *Unwin,* 75 N. J. L. 500.

The second position assumed by appellants is that the taxes thus authorized to be levied are appropriated in part to a specific purpose, to wit, the transportation of officers, and to the extent of this appropriation both the Voorhees and the Kates franchise tax acts are effectually amended, and that Mr. Justice Garrison stated in the *Sutton* case, "if the statute be regarded as a taxing act or revenue-raising measure" its

constitutionality could not be supported, and that the amount to be raised by general taxation by municipalities must be strictly limited and the expenditure confined to municipal purposes; and therefore the third position followed that the expenditures thus directed to be made are not confined to strictly municipal purposes.

The answer to each and every one of these positions is a direct denial: the taxes thus authorized to be levied are not appropriated to a specific purpose, to wit, the transportation of officers, and neither the Voorhees nor the Kates act is to the extent of such appropriation effectually amended. The Voorhees and Kates acts are in full force and effect, and the payment of the entire sum thereunder is required to be made by the public utilities transporting the officers; the only difference is that in one case where no officers are carried, the amount of the tax would be paid in cash, whereas in the other case, where officers are carried, a credit is allowable on the full amount of the tax to the extent of the amount due for the carriage of such officers. In no sense can such statute be regarded as a taxing act or revenue-raising measure; it does not tax anybody or anything, and does not attempt to raise any revenue whatever.

There is no requirement that the monies raised under the Voorhees and Kates franchise tax acts shall be devoted to municipal purposes. They are raised under State legislation and are under the complete control and subject to the absolute disposition of the State; and the State having raised the same, can direct the channel into which the monies thus raised may go.

Another matter which seems to have entirely escaped the observation of appellants in their brief is that in determining the validity of a statute, as against an attack upon its constitutionality because violative of that provision of our Constitution which declares that the object of the act shall be expressed in its title, one cannot overlook the history of the legislation involved. This history will be found in the earlier portion of this brief, and shows the course of legislation beginning with the year 1910, and coming down thru the act of 1929. It will be seen by a reference to this historical summary of the legislation upon the subject of the carriage of police officers, *et cetera,* that always the title of the act under which such carriage was treated was either similar to or the same as the title now challenged.

As extremely pertinent to the significance of this historical situation, I would refer to the case of *Sawter* v. *Shoenthal,* 83 N. J. L. 499, where our Court of Errors and Appeals unanimously declared that under the requirement of the constitution that the object of an act must be expressed in its title, the true rule is that the object expressed must give notice of the effect of the legislation to one conversant with the existing state of the law. The validity of the title is not to be determined by nice distinctions of etymology or definition of words, but by the facts of the case and the history of the legislation. In that case will be found, in the opinion of Mr. Justice Swayze, a nice discussion of this principle, and a reference to the fact that "language which at one time may be quite inadequate to warn the public of the object of legislation, may at another, owing to custom or usage, be entirely sufficient." He

then points out the striking illustration afforded by the legislation as to riparian rights.

In the case *sub judice,* legislation similar to that now under consideration has been enacted under practically the same title for a period of over twenty years, without interruption and without challenge.

I also direct to the Court's attention the settled rule that if the general purpose is clearly expressed, it is unnecessary to refer to that which is germane or incidental thereto.

* * * * * * * *

A case which completely demolishes the point made by the City of Newark that to charge for the carriage of police, in the City of Newark, who hail from other municipalities would be to impose unequal and unconstitutional taxation upon the citizens of Newark is *Associated Schools* v. *School District No. 83,* reported in 122 Minn. 254, 142 N. W. 325, and reported with annotations in 47 L. R. A., N. S., 200.

In that case the legislature provided that the State might give agricultural training in certain local schools, and the argument was made that the law in question was unconstitutional. In the opinion of Judge Hallam, speaking for a unanimous court, the issue and its solution were stated succinctly as follows:

> "It is contended that to tax defendant district for tuition of pupils residing therein and attending plaintiff's school creates unequal taxation; that it constitutes the taking or appropriation of the money of the district without compensation, and without due process of law, and without a hearing to defendant, and for a purpose it may not desire. These contentions cannot be sustained. They are based on too narrow a

view of the power of the legislature over its municipal subdivisions and over matters of education.

"1. It has never been doubted that the state has the power to require of its municipal subdivisions the performance of duties of state concern, and to demand that they raise money by taxation and disburse the same for such purposes. These municipal subdivisions are mere auxiliaries of the state, created by the state as a means of exercising its political power in an orderly manner. Being thus subordinate agencies of the state, they are subject to the control and direction of the legislature in matters of internal government, and the legislature may require such public duties and functions to be performed by them as fall within the general scope and objects of municipal organization. *Laramie County* v. *Albany County,* 92 U. S. 307; *Mobile County* v. *Kimball,* 102 U. S. 691; *Washer* v. *Bullitt County,* 110 U. S. 558; *Talbot County* v. *Queen Anne County,* 50 Md. 245; *Marengo County* v. *Coleman,* 55 Ala. 605, 607."

The court further said, in speaking to the issue of equality of taxation:

"5. There is nothing in the statute in question that violates the constitutional requirement of equality of taxation. The law operates alike on all persons and property similarly situated. This is all that is required. *Walston* v. *Nevin,* 128 U. S. 578. Nor does it violate the constitutional requirement of a 'uniform system of public schools,' etc."

It will be seen from the above principles enunciated as in said case stated, that the control of the legislature over the funds and revenues (even to the extent of requiring revenues to be raised) of the city is paramount and supreme, and that just as education is a State or a governmental function, so is the administration

of the police a State function; and when the statute requires that each municipality shall be charged for the conveyance within its borders of the police of the State when on duty, and that such charge may be subtracted from its proportion of the franchise taxes due to it under the State law, it is quite clear that the law operates alike on all persons and property similarly situated—that is to say, it operates alike upon all the municipalities in the State to which franchise taxes are due under the statute and in which officers of the kind designated are transported.

> "As to the extent of legislative power in the imposition of pecuniary burdens upon the municipality, there is such variety of judicial views as to render the law rather uncertain and elastic. In general, the state has the power to require of its municipal subdivisions the performance of duties of state concern and to demand that they raise money by taxation and disburse it for such purposes; and if there is no special limitation in the constitution and the liability is one to be incurred in the discharge of a public or state duty, which it is proper for the legislature to impose upon the municipality, it can constitute no objection to the validity of a statute that the liability is to be created without its consent. In discussing this power of the state it has been held that the legislature may impose on a municipal corporation, without its consent, pecuniary obligations and liabilities with respect to: Discharge of obligations not cognizable either at law or in equity; building or acquiring a free bridge; compensation of an unauthorized private party for expenses incurred on behalf of the municipality; construction of a railway subway; damages for injuries in general caused by negligence of the municipality's servants, injuries caused by defects in streets or sidewalks, or inju-

ries to property by mob violence, regardless of fault of the municipality; an equitable accounting between contiguous towns contributing to a joint public improvement; expenditure of money for docks, wharves, and levees, or for schools; making a municipal assessment for local improvements; payment for construction of a railroad, for the cost of drainage incurred under color of an unconstitutional statute, for property appropriated to public use under the power of eminent domain, or for the support of paupers; payment of claims barred by the statute of limitations, or claims which the municipality had by duly authorized vote refused to recognize as valid, of debts unlawfully incurred in excess of charter limitations, of part of the expense of alteration of a railroad grade crossing or pensions to superannuated firemen, or of salaries of police commissioners appointed by the legislature or governor; payment to an assignee of municipal warrants; providing for public parks or sewers; reimbursement to a city officer for expenses incurred by him for counsel fees in a contest over city property, or to the state for moneys paid out for public improvements; and repayment of money which had been loaned to the municipality. But it has also been held that it rests exclusively with the people of the municipality to decide whether or not a debt shall be incurred for purely municipal purposes; whether it will subscribe for stock in a railroad company; and whether it will pay for public parks which it has not voluntarily purchased. The legislature has no constitutional power to provide means for the collection of a void obligation of a municipal corporation, or to compel a city to pay a claim made against it which it is under no obligation to pay, moral, legal, or equitable,'' 43 C. J. 279, Section 301.

I will set down here, merely for convenient reference, a few authorities bearing upon questions that are of collateral importance in the consideration of this case.

The office of policeman or police patrolman was unknown to the common law, and wherever it exists it is a creation of statute or municipal ordinance. The general rule is that under the provisions of State statutes creating or providing for the creation of the office, a policeman is considered a public officer, holding his office as a trust from the *State*, and not as a matter of contract between himself and the City, altho for some purposes he may be regarded also as a City officer. 43 *C. J.* 762. The authorities upon this subject are quite copiously set out in note 67 to the above quotation from C. J. Among them the leading case of *Buttrick* v. *Lowell,* (Mass.) 1 Allen 172, 173, is usually quoted. The court there held that the duties of police officers are of a public nature. Their appointment is devolved upon cities and towns by the legislature as a convenient mode of exercising a function of government; but this does not render them liable for their unlawful or negligent acts. The detection and arrest of offenders, the preservation of the public peace, the enforcement of the laws, and other similar powers and duties with which police officers and constables are entrusted, *are derived from the law,* and not from the city or town under which they hold their appointment. This case is also reported in 79 Am. D. 721. The State of Massachusetts adheres to the doctrine above quoted from Buttrick *v.* Lowell in *Riopel* v. *Worcester,* 213 Mass. 15, 99 N. E. 478.

The case of *Woodhull* v. *New York,* 150 N. Y. 450, makes it perfectly clear that under whatever

cases the nature of a policeman's office has been determined, "police officers can in no sense be regarded as agents or employes of the city."

The case of *Aldrich* v. *Youngstown* (Ohio), 140 N. E. 164; 27 L. R. A. 1497, is a recent authority for the proposition that "the creation and maintenance of a police department by a municipality are done in the exercise of its governmental functions."

It is held in *Ex parte Paducah,* 101 S. W. 898, that the control of the police system is regarded as a *governmental* function. The word *governmental* in such cases is used as showing the contrast in the classification of the functions of a municipal corporation into two divisions, the one governmental and the other municipal. See 43 C. J., sections 178, 179, and 180.

Another case strongly supporting this view is *Arnett* v. *State,* 8 L. R. A., N. S. 1192. This case also holds that "so far as principle is concerned, it is no objection that the State, while imposing upon cities and towns the burden of supporting their police organizations, designates its own agencies to make the plan efficient."

In the above-cited case of *Ex parte Paducah,* the whole subject of the complete *State* control of municipal authorities made use of in State government is considered, and it is there laid down that "It is important to bear in mind the before-mentioned distinction between state officers; that is, officers whose duties concern the state at large, or the general public, although exercised within defined territorial limits, and municipal officers whose functions relate exclusively to local concerns of the particular municipality. The administration of justice, the preservation of the public peace, and the like, although

confided to local agencies, are essentially matters of public concern. While the enforcement of municipal by-laws proper, the establishment of gasworks, waterworks, the construction of sewers and the like, are matters which pertain to the municipality as distinguished from the state at large." This is the rule as laid down in Dillon on Municipal Corporations, section 58. It is also the rule as laid down in *Lexington* v. *Thompson,* 68 S. W. Rep. 477, 57 L. R. A. 775, and also in *City of Paducah,* 86 S. W. 1123, where the right of the legislature to control the police system of a city as a governmental function is distinctly recognized.

If one is interested to pursue the subject as to the power of the legislature to impose burdens upon municipalities, and to control their local administration and property, a quite exhaustive note upon the subject will be found in 48 L. R. A. 467, where the case of *Connecticut* v. *Williams* is fully annotated, and the doctrine contended for by me in this brief is amply vindicated.

Most of the cases which hold such power not to exist, rest their decisions upon an implied constitutional right of Home Rule. In New Jersey, however, the doctrine of the inherent right to local self-government by municipalities is not recognized. *Atty. General* v. *McGuinness,* 78 N. J. L. 346; *Van Cleve* v. *Passaic Valley Sewerage Commrs.,* 71 N. J. L. 574.

I shall not, however, pursue the subject farther, except to say that in *Horton* v. *Newport,* 1 L. R. A., N. S. 517, a foot-note collects the cases to the effect that "the legislature has the same power over the revenues of the municipalities that it has over the funds of the State, and may

thus direct their application to such purposes as it deems appropriate for the public welfare."

The subject, however, need not be either dealt in or considered at great length, since the funds involved are not funds raised by the municipality by the taxation of its citizens, or their property, but the funds raised by the State under the franchise tax acts, over which the State has complete control, and to which no municipality has right or title except by the grace of the State which may be extended or withheld as to the State may seem proper.

* * * * * * * *

That the argument in Point III of appellants' brief, which is that act is unconstitutional, as violative of Article I, sections 19 and 20, is utterly baseless will appear from several considerations.

These provisions appear in the following language:

> "19. Municipal aid to private corporations.—No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation."
>
> "20. State or municipal aid to private corporations, etc.—No donation of land or appropriation of money shall be made by the state or any municipal corporation to or for the use of any society, association or corporation whatever."

The first observation to be made is that appellants admit that as to such uniformed public officers and detectives as are in the employ of the

City of Newark, the imposition upon the City of a duty to compensate the transportation company for their carriage is in no true sense a donation, but is founded upon a *quid pro quo*. If this is so, then, under the well-established rule the entire act would not be unconstitutional, but only so much thereof, the same being severable, as represents the cost for transporting officers of other municipalities.

Of course, I do not for the smallest fraction of a second admit that appellants' contention as to the unconstitutionality of that portion of the act which relates to the cost for transporting officers of other municipalities, or of a county, is sound, but here merely advert to the legal consequence, even if it were sound. Such consequence would inevitably be that appellants' case would fail. Elsewhere herein I demonstrate the unsoundness of appellants' contention as to the cost for transporting city or county officers not employed by the City of Newark.

The second observation to be made is that the claim made by appellants is not that the public utility company does not render a service of value in transporting the police officers of other municipalities or of the county in the City of Newark. The contention made by appellants is that the City of Newark is being charged for the transportation of the police officers of other municipalities than itself. To quote the language of appellants' brief (page 12), their claim is that "the effect of the act is to levy upon municipalities an arbitrary and undefined contribution for the benefit of counties and other municipalities." And on page 16 it is said, "As far as the City is concerned, therefore, although it may be argued that the Public Service Coordinated Trans-

port had rendered services which would support a payment by a municipality for which such services were rendered all credits given to the company as against the City of Newark for services rendered the county or other municipalities are, as to the City of Newark, without consideration to support them and become mere gifts."

It will therefore be seen that the contention of appellants is not that Public Service Coordinated Transport has not rendered a service useful and valuable in itself, and for which it is entitled to be paid by someone, but that the City of Newark is required to make an enforced contribution for the benefit of some other city or county. That such enforced contribution, even if it were required, does not come within the 19th and 20th sections of Article I is perfectly clear, since by the title and the language of both those sections, the prohibition is against municipal aid to *private* corporations, whereas the complaint of Newark is that it is required to make expenditure or contribution for the benefit of public corporations, to wit, other municipalities or counties.

The third observation to be made is that there are no facts and no law in this case which warrant the statement that the City of Newark "gives any money or property, or loans its money or credit, to or in aid of" respondent. The *source* of the credit claimed is the act of the legislature. The City of Newark does no act whatever; *it* gives nothing. It makes no "donation of land or appropriation of money * * * to or for the use of" defendant. The *source* of the money is the franchise tax levied by the State, not the taxation of the citizens of the City or their property. The deduction of the cost of

the transportation of the police officers is to be made from the money derived from this *State* tax. It is done not voluntarily by the City, but against the will of the City. The State gave and the State can take away. The practical effect of the act under scrutiny is that the City never gets the money which represents the cost of transporting the officers. It is levied by the State and its distribution is directed by the State. It can hardly, therefore, be logically said that the *City* can *give* away that which it never got.

The fourth observation is that the police is a State function. The authorities upon this subject will be found hereinbefore set forth in some detail. The preservation of order, apprehension of criminals, etc., is admitted by all the authorities to be a *governmental, State* function. That the police officers are employed by and localized in a city other than Newark, or in a County, does not change the character of their function—which is a *State* function. Hence, when the *State,* by the Gopsill Act, allows a deduction from the amount received under the State franchise tax to be made from the proportion of that tax allotted to the municipality in which the service was performed by the transportation company and the travel by the officer in pursuit of his State police function was accomplished, it is a compensation to the transportation company for a valuable service *rendered to the State,* and is founded upon a *quid pro quo,* within the definition of the Court of Errors and Appeals in the case of *Morris & Essex Ry. Co.* v. *Newark,* 76 N. J. L. 555. The officer doing his State work rides on the cars or busses of respondent company in pursuit thereof, and there is a peculiar fitness and convenience in the State's paying the company therefor out of the founds which repre-

sent the five per cent of the gross revenue of the company apportioned to the City wherein the transportation took place.

Mr. Frazer in his oral argument in the Supreme Court essayed the suggestion that the State gave the money derived from the franchise taxes to the municipalities to compensate them for repairing the damage to the streets caused by the trolleys and busses. This argument will not stand analysis. The Voorhees Franchise Act was passed in 1906. At that time the duty of repair of the track area in the streets, both by general statute and by conditions attached to all trolley franchises, rested entirely upon the street railway companies, and continued to do so until the bill relieving street railway companies from paving obligations (Chap. 129, Laws of 1927, page 243) was passed; and even under that act the duty still rests upon trolley companies to repair the damage caused by the operation of the street railway cars over their tracks.

It is therefore passing strange that the State should make a gift to the City to compensate it for making repairs which it was under no obligation to make and did not make.

The further, conclusive answer is that even if it were true—which it is not—that the State did have in mind reimbursing the City for its outlay in repairing the streets, it will still remain unanswerably true that the State in doing so was making a pure donation, which it was at liberty to continue or withdraw or diminish, if and when it saw fit. There was no obligation upon the State to begin such donations, and there is no obligation upon it to continue them. The State could expend the money received from the franchise taxes in any manner it saw fit, and if it

deemed it wise to pay thereout for the service rendered by street railway and bus companies in transporting officers engaged in the State function of police duty, this was at once an expenditure upon consideration and one against which no municipality could legally complain, for to repeat, the State gave and the State can take away.

It is therefore respectfully contended that the judgment of the Supreme Court should be affirmed.

Respectfully submitted,

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New Jersey Court of Errors and Appeals

City of Newark, in the County of Essex, and John Howe, City Treasurer of the City of Newark, *Relators-Appellants,* *vs.* Public Service Coordinated Transport, a corporation of the State of New Jersey, *Defendant-Respondent.*	*On Mandamus.* *On Appeal from Supreme Court.* *Case Number 96, February Term, 1932.*

ADDENDUM TO BRIEF OF RESPONDENT.

The City of Newark has graciously consented to my filing an addendum to my brief in the above-entitled cause, inasmuch as the original brief was drawn under great pressure for time, when it was supposed that the case would be argued at the previous term of the Court, and that the brief should be in the hands of the printer in time to enable me to furnish the Court with the printed copies thereof at the time of the oral argument. The case, however, was not reached at the previous term, and this addendum is therefore consented to.

I shall only direct the attention of the Court in this addendum to amplification of my argument in the brief to which this is an addendum, and the point to which I direct attention first is that entitled "The object of the act is not expressed in its title," in appellants' brief.

Appellants seem to contend under such heading that the act under criticism does not con-

cern public utilities, but concerns municipalities, and seeks to impose a burden under the police power upon the latter, without a title to adequately display that object.

That the act under criticism does "concern public utilities," and concerns them vitally, is not, and cannot be, successfully disputed. It regulates, so far as such utilities are concerned, the matter of the transportation by them of police officers and detectives, and concerns the matter of charging for their carriage. This was a matter which confessedly had been treated by the legislature under this identical title for somewhere in the neighborhood of twenty years immediately preceding the enactment of the act in question, and had not been treated of under any other title thruout that period. Does such title express the object of the act?

In *Bumsted* v. *Govern,* 47 N. J. L. 373, Mr. Justice Dixon, speaking for the Supreme Court said, "The constitutional provision is that 'every law shall embrace but one object, and that shall be expressed in the title.' * * * It is on all hands agreed that its purpose 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, altho it does not indicate the means or method of attaining this object. * * * In considering whether the title of an act meets this requirement, it must be presupposed that the legislature and the public are cognizant of the public laws touching the subject on which the intended statute is to operate." This case was affirmed under the same title in 48 N. J. L. 612.

I will not weary the Court by repeating the history of this legislation, a fairly full sketch of which will be found in my brief to which this is an addendum on pages 3 *et fol.* From this historical survey it will be manifest that both the legislature and the public were cognizant of the indisputable fact that the matters of the transportation by public utilities of public police officers and of their being carried free or charged fare had uniformly and uninterruptedly been dealt with under the same or a similar title as the one which labels the act in question.

If it is legitimate to deal under such title with the question of the free or compensated carriage of police officers, and if it always has been so dealt with by our legislature, of which fact it and the public were thoroly cognizant at the time of the enactment of the challenged statute, and if the challenged enactment requires no exercise of the taxing power by the municipality to pay for such carriage, but merely allows the utility to claim a credit on a payment due from it under a State statute, and in no way interferes with the imposition and levy under that statute of the tax provided for thereby—in other words, allows the utility to collect fare for such carriage and provides "the means and method of attaining that object,"—which is all that the challenged legislation attempts or accomplishes, it would seem too clear to require extended argument in its support that appellants' main point challenging the judgment of the Supreme Court in this case, as stated in its brief, *i. e.,* "The reasoning in the case of *State* v. *Sutton* was to the effect that in an act relating to public utilities an obligation fairly referable to the police powers of the state might

be imposed upon a public utility, but the act of 1929 imposes no police power burden upon a public utility. It in effect relieves a public utility of such a burden theretofore imposed. (Appellants' brief, p. 5) * * * The fatal defect in the 1929 act lies not in its effort to relieve the transportation companies of the exaction theretofore made upon them, but in the fact that the exaction as an exercise of the police power is transferred to the municipalities. (*ibid.,* p. 6)''—in other words, appellants' contention is that such obligation is sought to be imposed upon municipalities and is not entitled as to municipalities, but as related to public utilities (*ibid.,* p. 7)—is conspicuously without force or legal substance.

No ''tax'' is sought to be laid upon any municipality; no ''exaction'' is imposed upon it. A mere means of compensating the utility for such carriage, from a fund raised under a State statute, by allowing the utility to claim a credit in making payment thereunder, is provided. Such provision for compensation is for carriage of public officers actually engaged in the performance of the *State's* function of policing. Such police officers' powers and duties, as is abundantly established in the brief to which this is an addendum, *are derived from the law,* and *not* from the *city* under which they hold their appointment.

As I have heretofore said, ''These franchise taxes are not levied by the cities, but by the State under State statute, and whatever the cities are given therefrom is by the graciousness of the State. It is the State's money, and is not paid by the City or the citizens, nor is it collected from the property of the citizens.

What the State gave the State can take away—all or any part of it." (My brief, p. 20.)

I might also reiterate what I have said at page 23 of my brief: "It should also be noted at this time that there is not a single provision of either the franchise or the license tax acts involved which is infringed by the act of 1929. These taxes are laid in the same way, assessed in the same way; the same amount of taxes is required to be paid by the utilities concerned as was required to be paid before the act of 1929 was passed. All that the statute does in its regulation of the public utilities involved is to affirm the validity of both franchise tax acts involved, and the duty of the utilities concerned to make the payments which are due and assessed thereunder, but allows such utilities in making such payments to claim a credit on account thereof for the carrying of police officers and others designated in accordance with the provisions of the 1929 act."

From all the above, the unsubstantiality of appellants' contention, to the effect that the challenged statute imposes an obligation upon municipalities and is not entitled as related to municipalities, but as related to public utilities, is clear.

It simply lifts from the shoulders of the utility, on which it had theretofore been imposed, an obligation which in the exercise of the police power the legislature had a right to lay upon it, and provides that for such carriage in the future the utility need not transport the officers without charge, but might claim a credit for such carriage on the funds which it would be obliged to pay under and by virtue of the provisions of a tax statute enacted by the legislature.

The title of the statute, in the light of its historical background, its main object, and the means and method adopted for carrying that object into effect, was admirably and sufficiently calculated to inform both the legislature and the public of its object and purpose; and in the light of the authorities heretofore cited, in no way infringes the constitutional provision which is claimed by appellants to have been infracted.

It is obviously true that the act is one to regulate utilities by changing an existing regulation and substituting therefor a new one with respect to the carriage of police officers—a regulation which had been imposed under the identical title of the present act, persisted thereunder for twenty years, and of which both the legislature and the public must be held to have been entirely cognizant.

* * * * * * *

A crowning fallacy in the argument under criticism is contained in point two of appellants' brief, to the effect that "It is unconstitutional as violative of Article IV, section 7, paragraph 12 of the State Constitution," where appellants say on page 14 of their brief: "It is therefore respectfully submitted that the imposition of this burden is violative of the uniform taxation provision of the constitution."

Such position has absolutely no support in the law, and is in flat contradiction of decisions of the Courts of our State.

The first objection to this statement is that allowing the utility to claim a credit for the carriage of police officers is in no sense the imposition of a *burden* in violation of the uniform taxation provision of the Constitution. The tax

itself upon which the credit is allowed or the deduction permitted to be made is not a tax which is subject to the constitutional provision with respect to uniformity of taxation. The tax is one expressly stated to be imposed for the use of the public streets. Such a tax has been uniformly held to be a license tax, and not to be affected by this provision of the Constitution. *State, Johnson* v. *Asbury Park,* 58 N. J. L. 604; *Railway Company* v. *Jersey City,* 73 N. J. L. 481.

Such a tax is obviously not a tax upon property, and a citation of the numerous cases other than those hereinbefore set forth would be wasteful of time.

* * * * * * *

In addition to what I have said in my brief to which this is an addendum, I wish especially to direct the Court's attention to the misuse which is made in appellants' brief of the case of *Essex County Park Commission* v. *West Orange,* 75 N. J. L. 376. That case is not at all in point.

In that case a writ of certiorari brought up a tax assessed in the year 1906 by the township of West Orange against the Essex County Park Commission, on certain land situate in the township; it also brought under review a judgment of the State Board of Equalization reversing an order of the county board of taxation of Essex County, which board had ordered the tax in question to be struck out of the tax duplicate.

The land in question was purchased or condemned by the commission for the purposes of a county park. It was assessed at $50,000—this being the true value of the land without regard to any buildings or other improvements thereon. There were buildings upon it valued at about

$20,000; and the park commission had expended upon the land for other improvements the sum of $100,000.

The tax in question was levied pursuant to the supplement of April 20, 1906, to the general tax law of 1903. The supplement enacted that "all lands the property of any county, and all lands the property of any taxing district, which are situated within the limits of any other taxing district, shall be subject to taxation by the taxing district within which such lands are situated at the true value of such lands, without regard to any buildings or other improvements on such lands, notwithstanding any exemption provided for in the act to which this is a supplement."

The Supreme Court, after having validated the said supplement as a proper exercise of the taxing power, based upon a permissible classification, then used this language: "The above views are based upon the theory that the act of 1906 is in truth *an act for taxing property,* within the meaning of the constitutional clause that prescribes generality and uniformity and the adoption of a basis of true value. That it is *in form* an act for taxing property is quite clear. That it is such *in substance* is by no means so clear. The act seems to differ from an ordinary tax law in that it does not provide for a direct imposition upon any private owner of property. In effect it merely requires one public agency to contribute towards the support of another public agency, both agencies existing for the purposes of government in and for the several localities in question. The act of 1906 therefore merely requires public moneys to be taken from one public agent and paid to another. Since, however, this question was not fully dis-

cussed by counsel, we leave it undetermined, and base our decision upon the view that the act of 1906, treated as an act for taxing property within the meaning of the constutition, is not in violation of that instrument.''

The case was taken to the Court of Errors and Appeals, and under the same title as in the Supreme Court, will be found in 77 N. J. L. 575. The judgment of the Supreme Court was reversed, and it was held that the supplement to the General Tax act of 1903, approved April 20, 1906, deals with taxation and in terms imposes taxes upon certain public lands and must be considered as imposing a tax. In the course of the opinion, read by Mr. Justice Voorhees, it is said:

''This court is unwilling to sustain the act upon the idea intimated in that opinion that a tax, strictly speaking, may not be involved, but that, in substance, this law provides a method of enforced contribution exacted by the state from one public agency toward the support of another public agency, requiring public moneys to be taken from one public agent and paid to another. It may well be doubted whether the legislature has such power. The enactment, which is a supplement to the Tax act, deals with taxation and in terms imposes taxes upon certain public lands. The law, therefore, regards it as a tax and it must be so dealt with.''

It will thus be apparent that neither the Supreme Court nor the Court of Errors and Appeals did otherwise with respect to the matter of an enforced contribution exacted by the State from one public agency toward the support of another public agency than to speak of such matter as purely *obiter dicta,* and that neither

the Supreme Court nor the Court of Errors and Appeals expressed its opinion upon whether such a contribution could be enforced.

The Supreme Court expressly stated, "We leave it undetermined, and base our decision upon the view that the act of 1906, treated as an act for taxing property within the meaning of the constitution, is not in violation of that instrument." And the Court of Errors and Appeals merely expressed a doubt whether the legislature had any such power, and left the matter entirely undetermined.

In dealing with this matter in its brief, the City of Newark attempts to make an argument out of it which the expression of neither of the courts will support. The language of the brief (page 14) in this respect is: "The repeal of an exemption having thus been held to be a tax, so must an enforced payment by a municipality to the support of another public agency be regarded as a tax, and as in the Park Commission case the Court of Errors and Appeals held that a discriminatory exemption violated the constitutional requirement of uniformity in taxation so must a contribution of this type be held violative of the constitution. Moreover, the disapproval by the Court of Errors and Appeals of the attitude of the Supreme Court in the Park Commission case in relation to the transfer of funds from one public agency to another, though expressed in the form of a doubt, was a direct reversal of the lower court on this question. It is therefore respectfully submitted that the imposition of this burden is violative of the uniform taxation provision of the constitution."

It would be quite difficult, in the space occupied by this quotation from Appellants' brief, to group more fallacies and *non-sequiturs* than are there found.

It does not follow that because under the peculiar facts of the Park Commission case the exemption was held to be a tax, that therefore, under the utterly different facts of the case *sub judice,* the credit which Public Service Coordinated Transport is entitled to claim on its tax would also be held to be a tax.

It does not follow that because the payment by a municipality in the Park Commission case was held to be an enforced payment, that the credit claimed by Public Service on its tax would be held to be a payment by a municapility, enforced or otherwise.

It, of course, does not follow that because in the Park Commission case the exemption was held to be in violation of the constitutional requirement, because the classification was illegal and illusory, that therefore a credit such as is claimed by Public Service would likewise be held to be violative of the constitution.

It is the sheerest nonsense to say that the disapproval by the Court of Errors and Appeals of the attitude of the Supreme Court in the Park Commission case, tho expressed in the form of a doubt, was a direct reversal of the lower court on this question.

In the first place, the Court of Errors and Appeals expressly refused to pass upon this question, and therefore there was no reversal of the lower court on this question, direct or otherwise. And the fact that the Court of Errors and Appeals expressed a doubt and refused

either to base its decision on the point or to decide it, makes the language of the brief to the effect that the expression of such doubt was a direct reversal of the lower court on this question singularly significant, inasmuch as it shows appellants to be in the last extremity for reasons to reverse the judgment of the Supreme Court when they are compelled to indulge in such obvious illogicalities and *non-sequiturs* as have been pointed out above.

Further, it cannot be overlooked that when appellants say, in the last sentence of the quoted section of their brief, "It is therefore respectfully submitted that the imposition of this burden is violative of the uniform taxation provision of the constitution," that they are seeking to find likeness and application where neither has existence.

It is perfectly clear that the allowance to Public Service of the right to claim a credit against a city for service rendered to officers of the law on active duty within its borders is in no sense a tax, but merely a method of allowing Public Service to recompense itself for services actually rendered to the municipality in which the carriage of such officers takes place and which was beneficial to such municipality.

It cannot be lost sight of, further, that the credit allowed to Public Service is not against any fund raised by the municipality by the exercise of its power of taxation, but against a tax imposed against Public Service by the State, and of which tax the State had the undoubted right to make such disposition as it saw fit; in other words, the money was money raised by State authority and under State machinery, and was a fund that the State could have devoted

to a municipality or could have diverted to other use in which the municipality had no part. Consequently, the State having bestowed the fund, it had the unquestioned right to take all or any portion of it away, and devote it to compensation for services rendered to police officers in the performance of their functions.

* * * * * * *

The other questions raised in the brief of appellants have been so exhaustively dealt with in the brief to which this is an addendum that it is deemed unnecessary to do more than to refer to that fact.

* * * * * * *

It is therefore respectfully contended that the judgment of the Supreme Court should be affirmed.

Respectfully submitted,

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Attorney for Respondent.

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