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COMMENTS

OBLIGATIONS OF A STATE-CREATED AUTHORITY: DO THEY CONSTITUTE A DEBT OF THE STATE?—Although provisions in a number

of state constitutions limit the amount of debt a state may incur,[1] state legislatures frequently have attempted to circumvent such limitations. Recent decades have seen increased use of the "authority," set up by the legislature to accomplish a particular objective and given power to issue evidences of indebtedness to finance the objective, repayment to come from the revenues of the authority, with the declaration that the obligations of the authority are not those of the state. The enabling legislation has been challenged as unconstitutional, often on the ground that the obligations of the authority are in fact those of the state, thus creating a debt of the state. The courts have been obliged to determine the precise status of the authority's long-term debts in order to ascertain whether the constitutional debt limitation has been violated.

Lack of extensive judicial precedent has led the courts to consider analogies drawn from the law of municipal corporations, especially in regard to the "special fund" doctrine. There has been a tendency to hold that where the state sets up an authority to construct a particular facility and the authority's sole source of revenue is payments made by users of the facility, such an authority is self-liquidating. As the authority's revenues are distinct from general state revenues, its obligations are not considered to be the debt of the state: thus there is no violation of the constitutional debt limitation.[2] Some courts, however, have been reluctant to adopt this viewpoint,[3] while others have extended the scope of the "special fund" doctrine, holding that where the authority has sole claim to special taxes, to be used to pay principal and interest charges, the debt is not the debt of the state, although the state acts as intermediary in collecting the taxes. In such cases, however,

[1] See, for example, MICH. CONST. (1908) art. X, §10: "The State may contract debts to meet deficits in revenue, but such debts shall not in the aggregate at any time, exceed two hundred fifty thousand dollars. The State may also contract debts to repel invasion, suppress insurrection, defend the State or aid the United States in time of war. . . ." WIS. CONST. (1848) art. VIII, §4: "The State shall never contract any public debt except in the cases and manner herein provided." Sec. 6. "For the purpose of defraying extraordinary expenditures the State may contract public debts (but such debts shall never in the aggregate exceed one hundred thousand dollars). . . ."

[2] See California Toll Bridge Authority v. Wentworth, 212 Cal. 298, 298 P. 485 (1931); Application of Oklahoma Turnpike Authority, 203 Okla. 335, 221 P. (2d) 795 (1950); New Jersey Turnpike Authority v. Parsons, 3 N.J. 235, 69 A. (2d) 875 (1949); People v. Chicago Transit Authority, 392 Ill. 77, 64 N.E. (2d) 4 (1945). See also McClain v. Regents of the University, 124 Ore. 629, 265 P. 412 (1928); Loomis v. Callahan, 196 Wis. 518, 220 N.W. 816 (1928). Also see 72 A.L.R. 687 at 688 (1931), and 146 A.L.R. 328 (1943) and cases cited therein.

[3] Idaho courts have held that the special fund doctrine is not the law of the state. State Water Conservation Board v. Enking, 56 Idaho 722, 58 P. (2d) 779 (1936). North Dakota appears to consider that state ownership of the land on which the facility is to be erected is the determining factor. See Wilder v. Murphy, 56 N.D. 436, 218 N.W. 156 (1928) and Lang v. Cavalier, 59 N.D. 75, 228 N.W. 819 (1930).

it is customary to require that the state shall have segregated the proceeds of such tax or taxes from the general tax funds.[4]

The courts have shown some inclination to apply to the state-created authority[5] the view, widely held, that a municipality incurs an obligation where it mortgages an existing facility to finance an addition to it or to erect other facilities.[6]

More recently, state legislatures have set up authorities to finance, construct, and maintain a facility for the use of the state itself. Sale of the authority's obligations is to provide the funds, with repayment to come from revenues of the facility. The authority is authorized to make agreements with the state or the agencies of the state, under which is assumed the obligation to make a series of payments to the authority, usually termed rentals, set at an amount to cover principal and interest charges on the debt. The state, in this way, becomes the sole supplier of revenue to the authority.

Some courts have held this arrangement an instalment-purchase and hence unconstitutional, because in reality the state has contracted to make payments on principal and interest, thus incurring a debt.[7] This view is more acceptable where, as often occurs, upon repayment of the authority's obligations, the property of the authority becomes the property of the state. Other courts have considered this arrangement to be a lease: as the authority is created as a separate legal entity, the source of its income is immaterial; since the operations of the authority are self-liquidating, its debts are not state debts, and the constitutional limitation is inapplicable.[8] In other words, some courts

[4] See, for example, State Highway Commissioner v. Detroit Controller, 331 Mich. 337, 49 N.W. (2d) 318 (1951); Johnson v. McDonald, 97 Colo. 324, 49 P. (2d) 1017 (1935); In re Senate Resolution No. 2, 94 Colo. 101, 31 P. (2d) 325 (1933).

[5] Wilder v. Murphy, 56 N.D. 436, 218 N.W. 156 (1928); Public Institutional Building Authority v. Griffith, 135 Ohio St. 604, 22 N.E. (2d) 200 (1939); State ex rel. Vernon W. Thomson, Attorney General v. E. C. Giessel, Director of Budgets and Accounts, (Wis. 1954) 65 N.W. (2d) 529 (1954). However, such principle was not applied in Loomis v. Callahan, 196 Wis. 518, 220 N.W. 816 (1928).

[6] See 72 A.L.R. 687 at 698 (1931) and cases cited therein. A discussion of the principles involved in such decisions may be found in State ex rel. Morgan v. Portage, 174 Wis. 588, 184 N.W. 376 (1921). Some, though not all, courts have held that a municipality may not pledge revenues from an existing property as security for a debt to build an addition to such property. This principle was extended to a state-created authority in Public Institutional Building Authority v. Griffith, 135 Ohio St. 604, 22 N.E. (2d) 200 (1939). Note cases cited therein.

[7] McCutcheon v. State Building Authority, 13 N.J. 46, 97 A. (2d) 663 (1953); Opinion of the Justices, 146 Me. 183, 79 A. (2d) 753 (1951); Public Institutional Building Authority v. Griffith, 135 Ohio St. 604, 22 N.E. (2d) 200 (1939); People ex rel. Greening v. Green, 382 Ill. 577, 47 N.E. (2d) 465 (1943).

[8] Kelley v. Earle, 325 Pa. 337, 190 A. 140 (1937); Preston v. Clements, 313 Ky. 479, 232 S.W. (2d) 85 (1950); Loomis v. Keehn, 400 Ill. 337, 80 N.E. (2d) 368 (1948).

consider the source of the authority's income as determining whether its debt is in reality the state's debt, while other courts are more impressed by the end to be achieved and whether there has been technical compliance with statutory and constitutional requirements and limitations.

Three cases decided in 1928 indicate some of the factors considered by courts in determining the status of debts incurred by a state-created authority. In *Wilder v. Murphy*[9] the North Dakota court held unconstitutional statutes which permitted a pledge of state-owned land on which the authority was to erect a dormitory. This was in spite of the fact that the authority's obligations were to be retired solely from revenue paid by the users of the dormitory. The opinion stated that "the property of the state is mortgaged and pledged and to that extent there is an obligation to pay on the part of the state. Thus it seems to us there is created a debt within the meaning of that term as used in the constitutional prohibition."[10]

The Oregon court in *McClain v. Regents of the University*,[11] however, held that the regents were free to lease portions of the campus to a person or corporation which would construct dormitory facilities thereon, to contract to pay as rental sums adequate to cover principal and interest payments, and to pledge income from the operation of the dormitories to secure such rentals. The court noted that the only liability lay against a "special fund which is to be made up exclusively of net rentals." The decision stated that the court was deciding only the precise question before it and did not undertake to say to what extent the "special fund doctrine" should be applied.[12]

In *Loomis v. Callahan*[13] the Wisconsin court held that no debt of the state was incurred by an arrangement which permitted the University regents to lease the partially completed Memorial Union Building and the land on which it stood, located on the University campus, to the state-created Wisconsin Building Corporation. The corporation was to pledge its leasehold to the annuity board of the State Retirement System as security for funds advanced by the board to complete and furnish the Union. Upon completion and furnishing of the building, the corporation would re-lease it to the regents. Revenues from its operation would be used to pay rentals due the corporation. The

[9] Wilder v. Murphy, 56 N.D. 436, 218 N.W. 156 (1938).
[10] Id. at 445.
[11] McClain v. Regents of the University, 124 Ore. 629, 265 P. 412 (1928).
[12] Id. at 636.
[13] Loomis v. Callahan, 196 Wis. 518, 220 N.W. 816 (1928).

corporation would use such rentals to retire its obligations. Prior to the actual leasing of the University property to the corporation, the regents enacted the requirement that each University student was to pay a fee, thus creating revenue to supply the rentals due the corporation. Loomis, a taxpayer, brought the action, alleging among other objections, that the transaction gave rise to a state debt within the meaning of the constitutional limitation. However, the plaintiff's brief did not point out that an existing facility was to be pledged as security for funds to complete that facility nor that state-owned lands were to be pledged as security for repayment of the loan by the annuity board.

In the majority opinion, the court stated:

> "It is of no legal consequence to say that the plan is a subterfuge and devised for the mere purpose of circumvening the constitution. That may be admitted without answering the question thus presented one way or the other. In order to condemn the transaction it must be found that it creates a state debt within the meaning of the constitution. Even though any plan which places needed buildings at the disposal of the state may be said to circumvene the constitution, it does not offend the constitution unless the plan does give rise to a state debt within the meaning of the constitution."[14]

The lease and re-lease device reappeared in *Kelley v. Earle,*[15] often considered the leading case on the status of debts contracted by a state-created authority. Here, the authority was to provide permanent public works and improvements. The Federal Emergency Relief Administration would pay nearly half the cost of the projects and finance the balance through purchase of the authority's revenue bonds. State-owned land was to be leased to the authority which would construct projects thereon and lease them to the state or the agencies or departments of the state. Principal and interest on the authority's obligations were to be met from rentals paid to the authority by the lessees. The first group of leases provided that the land and improvements thereon would ultimately become the property of the state. The court held that the state had assumed a continuing obligation which constituted a debt in violation of the constitutional debt limitation.[16] As a result, new leases were drawn, providing that upon termination of the lease, title and ownership of the project and the land would vest in the authority. With this alteration, the courts held the arrangement

[14] Id. at 524.
[15] Kelley v. Earle, 325 Pa. 337, 190 A. 140 (1937).
[16] Kelley v. Earle, 320 Pa. 449, 182 A. 501 (1936).

to be a long-term lease, which was permissible for the state to make. The unanimous opinion stated:

> "The State pays as it goes and receives consideration for each payment as it falls due. There is no purchasing here on the credit of the future; for each payment made there is a present benefit to the State. No title under the leases or agreements passes to the Commonwealth; it remains with the Authority.
>
> "It is urged that the transaction is in effect a purchase of capital assets by installments. To sustain this conclusion, of necessity we must hold the agreement a sale; we have held the agreement is a lease and nothing more."[17]

In *People ex rel. Greening v. Green*[18] the Illinois court held that the obligations of an authority, created to construct office buildings for state offices, ultimate ownership of such buildings to vest in the authority, were a debt of the state. The court observed that the rent to be paid by the occupying state offices was the only contemplated source of revenue for the authority, that amounts due under the leases were designed to meet principal and interest payments due on the obligations, and thus state appropriations would have to be sufficient to cover such amounts. The court stated:

> "The intent and purpose of the constitutional restriction is to impose a limitation on the power to appropriate, by limiting the amount of indebtedness which may be incurred without a vote [of the electorate]. . . . The general scheme and plan of this act, upon which no limit is set, affords an opportunity of paying off the bonded indebtedness by appropriations and taxes which might well be construed as doing indirectly what the State cannot, because of the constitutional limitation, do directly."[19]

Five years later, however, the same court in *Loomis v. Keehn,*[20] held constitutional and as not creating a debt of the state, an act which set up the Illinois State Armory Board and permitted it to issue obligations to erect buildings for lease to the state. Upon repayment of the bonded indebtedness, the board was to donate the property to the state. Rentals from annual state appropriations were to be paid to the board. *People ex rel. Greening v. Green*[21] was distinguished on the ground that the board of directors of the earlier authority was composed "sub-

[17] Kelley v. Earle, 325 Pa. 337 at 349 et seq., 190 A. 140 (1937).

[18] People ex rel. Greening v. Green, 382 Ill. 577, 47 N.E. (2d) 465 (1943).

[19] Id. at 586 et seq.

[20] Loomis v. Keehn, 400 Ill. 337, 47 N.E. (2d) 368 (1948).

[21] People ex rel. Greening v. Green, 382 Ill. 577, 47 N.E. (2d) 465 (1943).

stantially of all of the State Officers. . . . The identity of the State, through its officers, and its public Authority through the same officers, was so perfect as to make the one but the shadow of the other, and hence the obligation of the Authority was recognized as the obligation of the State. . . ."[22] The court further observed that the fact the state made annual appropriations to pay rents due did not create a debt.[23]

Courts of other states, faced with similar fact situations, have dealt in a variety of ways with the problems posed by the constitutional debt limitation. Some have been primarily concerned with the form of the proposed agreement between the authority and the state and have not been disposed to look behind the façade of legality. For example, the California court in *Dean v. Kuchel*[24] approved a lease between the state and a private partnership where the partnership was to erect an office building on state-owned land leased by the partnership, and re-lease the land and building to the state which had contracted to pay monthly rentals for a term of years, at the end of which time the state would acquire title to the property. This was held to be a simple lease: the legislature was not bound to make appropriations and as the state was not bound for the future, no debt was incurred and there was no violation of the constitutional debt limitation. A vigorous dissent, however, characterized the transaction as a contract of instalment purchase, disguised as a lease. The Kentucky court was in substantial agreement with the California court in *Speer v. Kentucky Children's Home*[25] and *Preston v. Clements*,[26] as was the Indiana court in two cases involving the debt limitations of municipal corporations, *Jefferson School Township v. Jefferson Township School Building Co.*[27] and *Protsman v. Jefferson-Craig Consolidated School Corporation of Switzerland County*.[28]

The Michigan court in *Walinske v. Detroit-Wayne Joint Building Authority*[29] held that bonds proposed to be issued by the authority to construct a joint city-county building, to be retired through rents paid to the authority under leases to be executed with the city and the

[22] Loomis v. Keehn, 400 Ill. 337 at 343, 47 N.E. (2d) 368 (1948).

[23] Id. at 341.

[24] Dean v. Kuchel, 35 Cal. (2d) 444, 218 P. (2d) 521 (1950).

[25] Speer v. Kentucky Children's Home, 278 Ky. 225, 128 S.W. (2d) 558 (1939).

[26] Preston v. Clements, 313 Ky. 479, 232 S.W. (2d) 85 (1950).

[27] Jefferson School Township v. Jefferson Township School Building Co., 212 Ind. 542, 10 N.E. (2d) 608 (1937).

[28] Protsman v. Jefferson-Craig Consolidated School Corp. of Switzerland County, 231 Ind. 527, 109 N.E. (2d) 889 (1953).

[29] Walinske v. Detroit-Wayne Joint Building Authority, 325 Mich. 562, 39 N.W. (2d) 73 (1949).

county, were not subject to the debt limitation imposed on municipal corporations. In its opinion the court avoided passing on whether the proposed contracts were actually leases or contracts of purchase, stating that, "We cannot pass on the lease in the instant case as it has not been executed and is not before us. . . ."[30]

On the other hand, the Ohio court in *State ex rel. Public Institutional Building Authority v. Neffner, Secretary of State,*[31] the New Mexico court in *State Office Building Commission v. Trujillo,*[32] the Maine court in *Opinion of the Justices,*[33] and the New Jersey court in *McCutcheon v. State Building Authority*[34] tended to emphasize the essential nature of the proposed transaction. These courts held the debts of the several authorities to be those of the several states and in violation of the constitutional debt limitation.

In *State v. Neffner*[35] an authority was set up to construct buildings on state-owned lands to house the inmates of a certain institution. The buildings were to be leased to the department of welfare which was to pay to the authority, up to the amount of the specified rentals, all fees received for the support of these inmates. The rentals would supply funds to retire the authority's bonds. The court refused to extend the "special fund" doctrine on the ground that the payments had been earmarked for the support and care of the inmates and if diverted to repayment of the authority's obligations the state would be obliged to draw on the general tax funds to care for its wards. The opinion pointed out that the agreement to pay the rentals created an agreement to pay a fixed sum just "as if the state had agreed to pay the interest and the accruing principal installments by warrant drawn upon the [state] treasurer." Thus the obligations of the authority would be "the ultimate obligation of the state. To hold otherwise would result in an evasion of the constitutional limitations."[36]

The constitutionality of state legislation creating an authority to construct an office building for state offices and agencies was challenged in the New Mexico, Maine, and New Jersey courts. Each of the authorities had been given power to issue evidences of indebtedness,

[30] Id. at 578 et seq.

[31] State ex rel. Public Institutional Building Authority v. Neffner, Secretary of State, 137 Ohio St. 390, 30 N.E. (2d) 705 (1940).

[32] State Office Building Commission v. Trujillo, 46 N.M. 29, 120 P. (2d) 434 (1941).

[33] Opinion of the Justices, 146 Me. 183, 79 A. (2d) 753 (1951).

[34] McCutcheon v. State Building Authority, 13 N.J. 46, 97 A. (2d) 753 (1953).

[35] State ex rel. Public Institutional Building Authority v. Neffner, Secretary of State, 137 Ohio St. 390, 30 N.E. (2d) 705 (1940).

[36] Id. at 398-399.

repayment to be made from rentals paid by the several offices and agencies.

The New Mexico court in 1941 held the enabling legislation unconstitutional in *State Office Building Commission v. Trujillo*[37] on the ground that as the statute designated the commission an agency of the state and the prospective lessees were clearly agencies of the state, "the state would be dealing with itself" in the lease arrangements. Since there would be only one party to such arrangements, no contract could result. The court termed the lease a device "which cannot be upheld except only under the theory of a special fund being created out of moneys to be raised whereby the agencies would be enabled to pay rentals . . . ,"[38] and then held the special fund doctrine was inapplicable as "[i]t is not specified in the Act that such moneys to be raised for payments of rentals *shall* come out of excise taxes or from any source aside or apart from general taxation."[39]

The Maine justices, in an advisory opinion, held that the contemplated contract would be a contract of purchase with the so-called rental the purchase price which the state would pay for the building. The state would thus incur a liability which would have to be included with existing liabilities to determine whether the constitutional debt limitation had been violated. It was immaterial whether the payments to be made by the state were termed rentals or instalments; the legal effect was the same.[40]

The New Jersey court in 1953 distinguished between the "external appearance" and the "substance" of legislation when, in *McCutcheon v. State Building Authority*,[41] it held that while the form of the statute provided the state with leasehold interests in building facilities for public use, actually it was designed to permit the state "by contracts of purchase to acquire . . . buildings possessed and constructed by the Authority by means of bond issues sustained by the State's promise to supply in the guise of rentals sufficient money to liquidate the bonds, available only through the medium of annual appropriations."[42] The rentals were described as

> "the purchase price of the property, for they are to be sufficient in amount to defray the Authority's operating expenses and in the end to liquidate the principal of the bonds and the interest accru-

[37] State Office Building Commission v. Trujillo, 46 N.M. 29, 120 P. (2d) 434 (1941).
[38] Id. at 52.
[39] Id. at 47.
[40] Opinion of the Justices, 146 Me. 183 at 189, 79 A. (2d) 753 (1951).
[41] McCutcheon v. State Building Authority, 13 N.J. 46, 97 A. (2d) 753 (1953).
[42] Id. at 57.

> ing thereon. Were this not so, the Authority would be unable to function, for it would have no other source of revenue adequate to retire the bonds."[43]

The entire transaction was held to be "a contrivance to accomplish that which by the same means the State could not do directly."[44]

Although the enabling statutes for state office buildings in Maine and New Jersey were held unconstitutional on the ground that the proposed transactions were essentially purchases and not leases, and hence the obligations of the authority were the obligations of the state, to be included in determining whether there had been a violation of the constitutional debt limitation, the Wisconsin court in *State ex rel. Thomson v. Giessel*,[45] decided in August 1954, took a different approach to the problem.

The legislature[46] had authorized the Wisconsin State Building Commission to complete the existing State Office Building. The land and present structure were to be leased to the Wisconsin State Public Building Corporation. The corporation was empowered to mortgage this leasehold interest as security for a loan to discharge outstanding indebtedness on the original structure and secure funds for the addition. The commission proposed to lease the land and existing building for fifty years; the corporation was then to re-lease the same real estate plus the addition to the commission for thirty-four years, and to mortgage its leasehold interest in the entire property to the State Investment Board which would then assign the security to the Allstate Insurance Company in return for the funds needed.

Although the proposed transaction was held to create a state debt falling within the constitutional debt limitation, the decision of the court was not based on the ground that the proposed lease between the commission and the corporation actually involved only one party, nor on the ground that the state would supply revenues for the rentals to be paid by the several departments and agencies to occupy the offices, rentals which would provide income to retire the debt due the Allstate Insurance Company for funds required to construct the addition and to retire the outstanding debt on the original building.

The Wisconsin decision rested solely on the point that the proposed transaction would mortgage existing state property. It refused to find a valid distinction between the encumbering of a leasehold

[43] Id. at 59.
[44] Ibid.
[45] (Wis. 1954) 65 N.W. (2d) 529 (1954).
[46] Wis. Stat. (1953) §§14.86, 14.88.

or the mortgaging of a title in fee "from the standpoint of whether the loan for the payment of which state property is pledged or mortgaged for security constitutes a state debt. . . ." The court acknowledged the conflict between its earlier decisions in *Morgan v. Portage*[47] (followed later in *Morris v. Ellis*[48]) and in *Loomis v. Callahan.*[49] It admitted that the effect of *Loomis v. Callahan* "was to hold that the mortgaging of a leasehold interest in existing state property to secure a loan of the lessee corporation does not constitute a state debt."[50] The decision stated:

> "Logically there would seem to be just as much coercion on the part of the state to pay an indebtedness, for the payment of which existing state property, or an interest therein, had been pledged as security but the state had not otherwise agreed to pay the debt, as there would be in case of a debt as to which the state had made itself directly liable for the payment thereof."[51]

The court then held that *Loomis v. Callahan* was overruled to the extent it was authority for the proposition that "the encumbering of an interest in existing state property as security for a loan, as to which the state is not otherwise directly liable to make payment, does not make such loan a debt of the state in violation of . . . the constitution."[52]

Thus, within three years, three courts have held that obligations issued by a state-created authority to erect a facility for the sole use of the state created an obligation on the part of the state, although the issues presented were not decided upon the same grounds.

From the available decisions, it is difficult to select any criterion which the courts have considered particularly important in determining whether debts of a state-created authority are in fact debts of the state. A number of criteria have been employed, including the ultimate ownership of the facility constructed by the authority, the pledging of state-owned property as security for the authority's obligations, the need for two distinct parties to create a valid contract, the form of the contract entered into between the authority and the agencies of the state (whether a long-term lease or a contract of instalment-purchase), the source of the authority's income (whether from fees

[47] State ex rel. Morgan v. Portage, 174 Wis. 588, 184 N.W. 376 (1921).

[48] Morris v. Ellis, 221 Wis. 307, 266 N.W. 921 (1936).

[49] Loomis v. Callahan, 196 Wis. 518, 220 N.W. 816 (1928).

[50] State ex rel. Thomson v. Giessel, (Wis. 1954) 65 N.W. (2d) 529 at 539.

[51] Id. at 540. The case attracted considerable attention in Wisconsin. The initial decision was handed down in August 1954. Petitioner immediately filed a motion for rehearing, which was denied in October 1954.

[52] Ibid.

paid by a special group of users, segregated revenues from designated taxes, rentals paid by state agencies supplied from state appropriations). Some courts have been inclined to consider paramount the need for the particular facility and, in assisting the legislature to secure it by upholding the constitutionality of the enabling statutes, have been reluctant to analyze the exact nature of the constitutional problems involved.

Granted the need for certain capital improvements which cannot be financed wholly within an annual budget, how should a court fulfill its function of adapting the law to fit current needs in the light of the constitutional debt limitation? Where there is no pledge of existing state property and a special fund furnished by users of the particular facility is the sole income of the authority, there seems every reason to consider that in fact the state has assumed no obligation: its property is not pledged and it is not committed to any future expenditure. Where, however, the state creates an authority and the authority issues evidences of indebtedness to finance a building, the offices of which are to be leased to state agencies which rely for their income on annual state appropriations, the state in fact has assumed the obligation to make such appropriations, especially where upon repayment of the authority's indebtedness, title to the facility is to vest in the state. It may be true that the state *as the state* has not issued the evidences of indebtedness, but the purchasers of the authority's obligations are aware that the agencies of the state have contracted to pay rent to the authority, thus providing it with a source of revenue, and that the state will make appropriations to cover the annual expenses of the agencies. If the courts are prepared to hold that the state incurs a debt when its property, which has been leased to an authority, is pledged as security for repayment of the authority's obligations, it seems inconsistent and unrealistic to hold that no debt is incurred where the state through its agencies enters into long-term leases with the state-created authority and where the rentals payable under such leases are fixed to retire the authority's obligations, upon payment of which the facility is to become the property of the state. The pledging of state property and the long-term lease which lays upon future state legislatures the duty of making annual appropriations, both create obligations and hence should be held to incur state debts.

If a constitutional requirement or prohibition exists, it is the duty of the courts to construe it in the light of its obvious meaning, not to twist it into approval of some end, however socially desirable that end may be. If changing social values demonstrate the desirability of re-

vising state constitutional debt limitations to permit the contracting of long-term debts for desired objectives, the voters should make the revision. In the meantime, those courts which lend judicial approval to schemes deliberately designed to circumvent the plain meaning of constitutional provisions are aiding legislators to assume powers denied them under the provisions of state constitutions.

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