

cannot prevail against provisions of the permanent part of the constitution.¹⁸ Also, it must be remembered that such ordinances are usually intended to have only a temporary or transient operation, and therefore, in such cases, the arrangements made by them may be changed by the legislature when duly constituted, under the new constitution.¹⁹

"The provision of a schedule that all prior laws not inconsistent with the constitution shall continue will ordinarily be given effect,²⁰ but a statute which is directly contrary to a provision of the constitution is not saved by such schedule provision.²¹

¹⁸ Mo.—State *ex rel.* Aquamsi Land Co. v. Hostetter, 336 Mo. 391, 79 S.W. 2d 463 (1934).

Tex.—Bass v. Albright, Civ. App., 59 S.W. 2d 891 (1933) (error refused).

Ordinance held valid as not conflicting.

Tex.—Bass v. Albright, *supra*.

¹⁹ Ala.—Duke v. Cahawba Nav. Co., 10 Ala. 82, 44 Am. D. 472 (1846).

Ohio—State v. Taylor, 15 Ohio St. 137.

Tex.—Caudle v. Welden, 32 Tex. 355.

²⁰ Right of action.

Provision of schedule of constitution to extend and continue in force all laws in force in territory at time of admission of state into union which were not repugnant to constitution and not locally inapplicable, included statute giving right of action to recover damages for wrongful death.

Okl.—F. W. Woolworth Co. v. Todd, 204 Okl. 532, 231 P. 2d 681 (1951).

²¹ Mich.—Dearborn Township v. Dail, 334 Mich. 673, 55 N.W. 2d 201.

Pa.—Gallagher v. Silver Brook Coal Co., 61 Pa. Super 1 (1915).

New provision as controlling.

General provisions in schedule of new state constitution continuing previous law in effect must yield to constitutional provision stating that powers of counties and municipal corporations formed for local government shall include, not only those granted in express terms, but also those of necessary or fair im-

However, a suit to enforce a tax lien may be saved from any unconstitutionality by a schedule of the constitution providing that all laws inconsistent with the constitution should remain in full force and effect until a specified date, and that all taxes due and owing prior to the adoption of the constitution should continue to be valid as though the constitution had not been adopted."²²

HOW "THE SCHEDULE" IS USED IN SOME STATE CONSTITUTIONS

The following is a list of those states whose constitutions contain specific scheduling provisions. The number in parentheses after the state refers to the relevant constitutional article. For all the other states in the list "The Schedule" is a separate article of the constitution but has no specific number. It is identified merely by its title "Schedule," and is placed at the end of the constitution.

plication, or incident to powers expressly conferred or essential thereto.

N.J.—City of Newark v. Charles Realty Co., 9 N.J. Super. 442, 74 A. 2d 630 (1950).

²² Mo.—Collector of Revenue v. Parcels of Land Encumbered with Delinquent Taxes, 362 Mo. 1054, 247 S.W. 2d 83.

CASES

Starr v. Hagglund, 374 P. 2d 316 (Alaska 1962).

Aquamsi Land Co. v. Hostetter, 336 Mo. 391, 79 S.W. 2d 463 (1934).

Bass v. Albright, 59 S.W. 2d 891 (Tex. 1933).

Mann v. Osborn, 128 Okla. 32, 261 P. 146 (1927).

Willis v. Kalmback, 109 Va. 475, 64 S.E. 342 (1909).

ARTICLE

Bebout, *Launching a New Constitution*, in MODEL STATE CONSTITUTION 51 (5th ed. 1948). *Ibid.*, Article XIII (Commentary, pp. 112-116).