

Fall 1972

Taxation of Real Property in Cook County under the Constitution of 1970, 6 J. Marshall J. of Prac. & Proc. 87 (1972)

Richard Wattling

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Richard Wattling, Taxation of Real Property in Cook County under the Constitution of 1970, 6 J. Marshall J. of Prac. & Proc. 87 (1972)

<https://repository.law.uic.edu/lawreview/vol6/iss1/4>

This Article is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

TAXATION OF REAL PROPERTY IN COOK COUNTY UNDER THE CONSTITUTION OF 1970

by Richard Wattling*

The Revenue Article of the 1970 Illinois Constitution¹ has worked, or more precisely will work, substantial changes in the taxation of real property in Cook County. It replaces the pre-existing system of *de facto* classification of real property for purposes of taxation with a system of *de jure* classification. It expands, substantially, the legal remedies available to real property owners aggrieved by the valuations placed upon their properties by the assessing authorities. It probably entails a devolution upon the Cook County Board of a substantial portion of the discretionary power heretofore exercised by both the Cook County Assessor and Board of Appeals with regard to the valuation of real property for tax purposes. And, finally, it would appear to require legislation in the near future by the General Assembly and the Cook County Board, lest a chaotic situation arise, regarding the assessment and collection of real property taxes in Cook County.

I.

CLASSIFICATION OF REAL PROPERTY FOR PURPOSES OF TAXATION

Classification of real property for purposes of taxation connotes a division of real property such that realty included in certain classes will be subject to a higher tax, while realty placed in other classes will be subject to a lesser tax than would be the case were there no such classification. Phrased somewhat differently, by such classification is meant a division of realty calculated to affect markedly the incidence of taxation among the individual pieces of real property so classified. Such classification, however, is based solely on the characteristics of the real property itself. Factors such as the form of ownership, whether by an individual, partnership or corporation, and the particular trade or business, if any, of the user are considered irrelevant.

Within the framework of an annual *ad valorem* property tax, such classification might take one of two forms: varying the rate of tax from class to class; or levying the same rate of tax for all classes, but varying the tax base, the percentage of actual value at which property is assessed for tax purposes, from class to class. Given the Illinois system of a single tax rate applicable

* B.A., J.D., Harvard University.

¹ ILL. CONST. art. IX, §4 (1970).

to all taxable property in a given taxing district, classification of real property for purposes of taxation means that realty included in different classes will be assessed at varying percentages of actual value.

Deliberate discrimination is the essence of such a classification. Given that all of the taxable property in Cook County is to be assessed at the average rate of 50 percent of actual value, it is obvious that if some classes of property (*e.g.*, single-family homes) are assessed at, for example, 25 percent of actual value, then other classes or types of property (*e.g.*, commercial property such as office buildings and factories) must be assessed at, about, 75 percent of actual value. Needless to say, in such a situation it is in the interest of the owners of real property in disfavored classes to invalidate the classification system in effect, and compel assessment and taxation on a non-classified basis. Again assuming an average assessment of 50 percent of actual value, the owner of property placed in a class destined to be assessed at 75 percent of actual value could reduce his tax by one-third by invalidating the classification system.

II.

TAXATION OF REAL PROPERTY IN COOK COUNTY UNDER THE 1870 CONSTITUTION

With regard to the taxation of real property, the operative provisions of the 1870 Constitution were contained in section 1, article IX, the Revenue Article:

"The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property — *such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise.* . . ."²

The first clause of section 1 clearly provided for a non-classified property tax, proscribing the classification of property for purposes of taxation, as that term has heretofore been defined.³ Admittedly, property could be classified, however, for certain other purposes, as in connection with the administration of the assessment process.⁴ Thus, the General Assembly could provide

² ILL. CONST. art. IX, §1 (1870) (emphasis added).

³ Cushman, *The Proposed Revision of Article IX of the Illinois Constitution*, 1952 U. ILL. L.F. 226, 235; Comment, *The Illinois Constitutional Requirement of Uniformity of Taxation*, 33 ILL. L. REV. 57, 61-62 (1938); *People ex rel. McDonough v. Grand Trunk Western R. Co.*, 357 Ill. 493, 497-99, 192 N.E. 645, 647 (1934).

⁴ For an example of classification for purposes of assessment, as distinguished from classification for purposes of taxation, see *People ex rel. Toman v. Packard*, 377 Ill. 610, 614, 37 N.E.2d 330, 332 (1941):

that railroad property would be assessed by the State Department of Revenue, while other property would be assessed locally.⁵ Personal property might be assessed by certain officials and real property by others. Rural realty might be equalized for assessment purposes separately from urban real estate.⁶ But except for rare and distinguishable dicta, the Illinois Supreme Court has never deviated from the view that this clause requires all property to be taxed uniformly; that is, at the same percentage of actual value.⁷ As recently as 1968, the supreme court said, construing section 1:

[The] constitution recognizes no difference between real and personal property nor does it make any distinction between tangible and intangible personal property. It allows the legislature wide latitude but requires uniformity. The Revenue Act enacted under this constitutional grant provides that all real and personal property in the State shall be assessed and taxed, except so much thereof as may be exempt by the Act, and that all such property subject to assessment shall be assessed at its fair cash value.⁸

However, the second clause of section 1, the emphasized language, had far reaching and probably unintended effects. This language was held by the courts to preclude direct judicial review of any valuation of real property made by the several

[The] principle of law upon which the rule of uniformity in taxation stands does not require that the taxing officials, while engaged in the fixing of the full fair cash value of property, shall adopt the same rules as to all classes of property. They are permitted to exercise their judgment, formulate and apply such rules in the valuing of the various items of property and the classes thereof as will best enable them to arrive at the fair cash value of the property which is the subject of assessment.

⁵ *People ex rel. Ruchty v. Saad*, 411 Ill. 390, 397, 104 N.E.2d 273, 277 (1952).

⁶ *Budberg v. County of Sangamon*, 4 Ill. 2d 518, 123 N.E.2d 479 (1954); *People ex rel. Lunn v. Chicago Title and Trust Co.*, 409 Ill. 505, 515, 100 N.E.2d 578, 584-85 (1951); *People ex rel. Lindsey v. Palmer*, 113 Ill. 346, 348, 1 N.E. 830-31 (1885).

⁷ The dicta are in *People ex rel. Toman v. Olympia Fields Country Club*, 374 Ill. 101, 103, 28 N.E.2d 109-10 (1940): "No prohibition against classification of property and taxpayers into different classes can be read into the Constitution"; and *People v. Southwestern Bell Tel. Co.*, 377 Ill. 303, 307, 36 N.E.2d 362, 364 (1941): "The constitution does not prohibit a classification of property and taxpayers." See Cohn, *Constitutional Limitations on Taxation in Illinois*, 1961 ILL. L.F. 586, citing both the *Olympia Fields* and *Southwestern Bell* decisions:

A tax on income as property would assume the validity of legislative power to classify property for purposes of taxation. It is not seriously suggested by any student of the problem that such a power exists, notwithstanding some judicial dicta to the contrary.

Id. at 611. Comment, *Taxation of Intangibles under the Illinois General Property Tax*, 35 ILL. L. REV. 716 (1941), referring to *Olympia Fields*:

The court may have confused the permissive classification which the Constitution authorizes (when certain specified classes of businesses are to be taxed by the legislature) in the second half of §1 of Article IX, with the uniformity requirement of the first half of that section.

Id. at 726 n.57. For similar comments on the *Southwestern Bell* decision, see Troupis, *Full Fair Value Assessment in Illinois*, 44 ILL. L. REV. 160, 177-78 n.101 (1949); Young, *Taxpayers' Remedies*, 1952 U. ILL. L.F. 248, 271.

⁸ *People ex rel. Hamer v. Jones*, 39 Ill. 2d 366-67, 560, 235 N.E.2d 589, 593 (1968).

assessing authorities, leaving an aggrieved taxpayer the sole remedy of a bill in equity only in situations so extreme as to constitute "constructive fraud." A summary of the judicial construction of these words, which appear in both the 1870 and 1848 Illinois Constitutions, is set forth in the leading case of *Bistor v. McDonough*:⁹

[Section] 1 of article 9 of the Constitution requires the value of property for taxation to be ascertained by some person or persons to be elected or appointed in such manner as the general assembly shall direct, and not otherwise. The power to impose burdens and to raise money is a legislative power, and may be exercised only by or under the authority of the Legislature. The persons elected or appointed, pursuant to section 1 of article 9 of the Constitution, to ascertain the value of property for the purposes of taxation, are exclusively invested with that power, and courts may not exercise it.

. . . .

[Under] section 1 of article 9 of the Constitution, the courts, in the absence of fraud, have no power to review the valuation of property made by the proper officers for purposes of taxation. For an excessive or unequal assessment, where the complaint is not fraud but an error of judgment merely, the sole remedy is an application for an abatement to such statutory agencies as have been provided for hearing the complaint.

[The] statutory provisions concerning the taxpayer's right to have the assessors' valuation of his property for taxation reviewed by the board of review are intended to provide adequate protection against fraudulent or oppressive assessments. It is only where a valuation of taxable property has been fraudulently made and the complaining taxpayer has not waived his right to relief that the assessment is subject to judicial review. The jurisdiction of a court of equity may not be invoked against a fraudulent assessment of taxable property where the owner has failed to insist upon a legal remedy which would have afforded him complete relief. He must show that he has been diligent in pursuing his remedy to have the assessment corrected by the board of review in that he was prevented from pursuing such remedy by fraud, accident, or mistake. . . .

An administrative appeal to the board of review in counties other than Cook and to the Board of Appeals in Cook County, was provided.¹⁰ However, a further direct appeal to the courts from the valuations of the local assessor was not allowed, and all attempts to provide such further direct judicial review failed.¹¹

⁹ 348 Ill. 624, 629-31, 181 N.E. 417, 419-20 (1932). See also *Republic Life Ins. Co. v. Pollak*, 75 Ill. 292, 295 (1874); *People ex rel. Nordlund v. S.B.A. Co.*, 34 Ill. 2d 373, 376, 215 N.E.2d 233, 235 (1966).

¹⁰ ILL. REV. STAT. ch. 120, §§588-89, 598-99 (1871).

¹¹ *White v. Board of Appeals of Cook County*, 45 Ill. 2d 378, 380, 259 N.E.2d 51, 52-53 (1970); *Sanitary Dist. of Chicago v. Bd. of Review of Will County*, 258 Ill. 316, 318, 101 N.E. 555-56 (1913); *Keokuk & H. Bridge Co. v. People*, 185 Ill. 276, 279, 56 N.E. 1049-50 (1900). But see *Springfield Ma-*

The aggrieved taxpayer had a right to judicial relief, to what came to be termed indirect judicial review, only in cases so extreme that a court of equity would intervene to prevent "constructive fraud." The five generally accepted categories of constructive fraud were: (1) assessment so excessive that it could not have been honestly made; (2) assessment made by mere will without the exercise of judgment; (3) assessment arbitrarily made in disregard of recognized elements of value; (4) assessment made in violation of rules; and (5) intentional and systematic discrimination.¹² Specifically, it was generally believed, until quite recently, that judicial relief premised solely on the ground of a fraudulently excessive assessment was unlikely unless the assessment in question was at a percentage of actual value three or four times the prevailing or average level of assessment.¹³ In Cook County, where the prevailing level of assessment has been about 50 percent of the actual value of real property,¹⁴ this meant that a specific parcel would have to be assessed at more than 150 percent of its actual value before the courts would intervene on the ground of constructive fraud.

rine Bank v. Property Tax Appeal Bd., 44 Ill. 2d 428, 256 N.E.2d 334 (1970), and Will County Bd. of Review v. Property Tax Appeal Bd., 48 Ill. 2d 513, 272 N.E.2d 32 (1971) in which the supreme court reviewed decisions of the Property Tax Appeal Board of the Department of Revenue, established by ILL. REV. STAT. ch. 120, §§592.1-4 (1971), without any reference to the question whether section 1 of article IX of the 1870 Constitution barred any such judicial review.

¹² This whole matter is considered at length in Cushman, *The Judicial Review of Valuation in Illinois Property Tax Cases*, 35 ILL. L. REV. 689 (1941); Young, *Taxpayers' Remedies*, 1952 U. ILL. L.F. 248; and Wattling, *Taxation of Real Property in Cook County — The "Railroad Cases" and the Future of De Facto Classification*, 1 JOHN MAR. J. OF PRAC. & PROC. 212, 221-27 (1968).

¹³ See Gale, *Assessment and Collection of Taxes*, 1952 U. ILL. L.F. 102, 196; Comment, *The Illinois Constitutional Requirement of Uniformity in Taxation*, 33 ILL. L. REV. 57, 67, n.60 (1938). However, in *People ex rel. County Collector of St. Clair County v. American Refrigerator Transit Co.*, 33 Ill. 2d 501, 504-05, 211 N.E.2d 694, 697 (1965), the court held as a matter of law, that an overassessment of 78 percent or more constitutes constructive fraud:

[Appellant] also argues that the judgment must be reversed since there was no finding of fraud in 'any shape, form or fashion.' It is clear that fraud, either actual or constructive, must be proved in order to sustain the judgment. However, we do not think it necessary that there be an express finding of fraud if the evidence supports such a conclusion. Here, the evidence clearly shows that the appellee's property, after application of the multiplier, was assessed at \$158,500.00 and that its actual fair market value was \$161,000.00. Thus, appellee's property was assessed at approximately 98 per cent of its full fair market value, while other locally assessed property was assessed at only 55 per cent of full fair market value. This, in our opinion, was tantamount to constructive fraud and supports the trial court's judgment that appellee is entitled to a refund. [98% — 55% = 43%; 43%/55% = 78.2%].

See also *People ex rel. Dallas v. Chicago, Burlington and Quincy R.R.*, 26 Ill. 2d 292-94, 186 N.E.2d 335-36 (1962), where the court indicated that an overassessment of 81.8% would constitute a constructively fraudulent discrimination.

¹⁴ See *People ex rel. Korzen v. Chicago, Burlington and Quincy R.R.*, 32 Ill. 2d 554, 209 N.E.2d 649 (1965).

Obviously such restricted judicial review of assessments afforded the assessing authorities a wide area within which they could classify real property for purposes of taxation, without fear that such assessments might be challenged successfully in court. Consequently, both successive County Assessors of Cook County and Boards of Appeals took full advantage of this situation to erect a comprehensive system classifying real property for purposes of taxation.¹⁵ It must be emphasized that such classification was not authorized by either the Constitution or statute; indeed, it was contrary to the specific provisions of both the Constitution of 1870 and the Revenue Act.¹⁶ Such classification was instead predicated upon the fact that the assessor, within certain broad limitations, could and did "get away with" systematic illegal and unconstitutional action.

The illegal and unconstitutional status, under the Constitution of 1870, of the Cook County system of classification of real property for purposes of taxation, was demonstrated in the leading case of *Aldrich v. Harding*,¹⁷ where the Cook County authorities were so imprudent as to admit, by demurrer, the very existence of the system. In that case the plaintiff had brought suit to enjoin the collection of taxes for 1927 on certain real property in the City of Chicago. A demurrer to the bill having been overruled, the collector elected to stand by it, and a decree was entered granting the relief prayed by the plaintiff. The collector appealed, and the Illinois Supreme Court, *per curiam*, affirmed.

[T]he bill also alleged the board of assessors and board of review . . . planned to make unequal and un-uniform assessments in Cook County . . . that knowing the average assessments of real estate throughout the State was 40 per cent of the full value, the authorities stated publicly that they would assess residence property at 25 per cent of its full value and business property at 60 per cent; that with the knowledge of average assessments throughout the state and being charged with the duty of equalizing assessments, the members of the board of review stated that on certain downtown streets the assessed value was as high as 80 per cent and in some cases 100 per cent of full value.

[The] valuation of property for taxing purposes must be the result of honest judgment and not of mere will. An assessing body has the right, and it is its duty, to exercise its own judgment in determining values, but it has no right to fix a valuation by its will, alone, without the exercise of judgment. In *Pacific Hotel Co. v. Lieb*, 83 Ill. 602, the court said that where the valuation is so grossly out of the way as to show that the assessor could not

¹⁵ See Ill. Dept. of Rev., PROP. TAX STAT. — 1969, 199 (1971); Fisher, *An Economist's Appraisal of the Illinois Tax System*, 1961 U. ILL. L.F. 543, 580.

¹⁶ ILL. REV. STAT. ch. 120, §§501-02 (1971).

¹⁷ 340 Ill. 354, 172 N.E. 772 (1930).

have been honest in his valuation — must reasonably have known that it was excessive — it is accepted as evidence of a fraud upon his part against the tax-payer, and the court will interpose. . . .

[Under] the numerous decisions of this court the property owner is entitled to a fair and honest exercise of judgment in assessing property. Where intent or design is sought to be shown or is materially involved, consideration may always be given to collateral facts and circumstances.

. . . .

[I]n the instant case it is apparent that the differences in value of the various kinds of property could not have been the result of differences of opinion but were arbitrary and willful on the part of the taxing authorities. The allegations of the bill, we think, satisfactorily show that appellee could not have obtained relief against the arbitrary, willful, and apparently fraudulent assessments made, in any proceeding before the taxing or reviewing bodies, and he necessarily sought a court of equity in which to proceed.¹⁸

Thus the term “*de facto* classification” was derived, so long employed to describe the classification system in effect in Cook County under the Constitution of 1870, in contradistinction to “*de jure* classification” of real property for purposes of taxation.

III.

TAXATION OF REAL PROPERTY IN COOK COUNTY

UNDER THE 1970 CONSTITUTION

The real estate tax provisions of the 1970 Illinois Constitution are contained in section 4 of article IX, the Revenue Article. They provide as follows:

Section 4. Real Property Taxation

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessment shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.¹⁹

¹⁸ *Id.* at 358-60, 172 N.E. at 774-75; *see also* to the same effect, *People ex rel. McCallister v. Keokuk and H. Bridge Co.*, 287 Ill. 246, 249-50, 122 N.E. 467-69 (1919); *People ex rel. McDonough v. Schmuhl*, 359 Ill. 446-49, 194 N.E. 731-33 (1935); *People ex rel. McDonough v. Grand Trunk Western R. Co.*, 357 Ill. 493, 192 N.E. 645 (1934).

¹⁹ ILL. CONST. art. IX, §4 (1970).

Most importantly, of course, section 4(b) permits the “*de jure* classification” of real property in Cook County and some five other counties having populations of more than 200,000 for purposes of taxation.

Of almost equal importance, section 4 also accomplishes the following results in Cook County:

- (a) It eliminates the pre-existing restrictions on judicial review of tax assessments, the restrictions upon which the Cook County Assessor had built his system of *de facto* classification.
- (b) It vests the power to classify real property for purposes of taxation in the County Board, leaving the County Assessor a mere ministerial function in that regard, unless the County Board should specifically otherwise provide.

A. *Direct Judicial Review of Real Property Assessments*

The real estate tax provisions of the 1970 Illinois Constitution do not contain the words “such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise”, or any similar language. Moreover, the legislative history of these provisions in the proceedings of the 1970 Illinois Constitutional Convention indicates that this omission was deliberate and with full knowledge that the scope of judicial review of valuations made for tax purposes would thereby be increased.²⁰

The original proposal of the Committee on Revenue and Finance was as follows:

Section 4.1 Real Property Taxation

[A]ny county over 200,000 population is authorized to classify real property for taxation purposes. The General Assembly shall establish a system of classification of real property for taxation purposes, which system may be adopted by any other county in lieu of uniform taxation of real property. In any county the level of assessment or the rate of taxation of the highest class shall not be more than two and one-half times the level of assessment or rate of tax of the lowest class.²¹

This proposal did not meet with general approval when considered by the full convention and after extensive debate in the Committee of the Whole, Delegate John Karns, the Chairman of the Committee on Revenue and Finance, proposed a

²⁰ The reports of the Committees on Revenue and Finance, and Style, Drafting and Submission are silent on the question of judicial review of real property assessments.

²¹ REC. OF PROC., SIXTH ILL. CONST. CONV. *Comm. on Rev. and Fin. Prop.* No. 2, Vol. VII at 2058 (1969-70).

“compromise,” which, with some modification, became subsections 4(a) and 4(b) of the present Revenue Article. The Karns proposal was:

Taxes upon real property shall be levied uniformly by valuation which shall be ascertained in such manner as the General Assembly shall provide by law. Provided, that subject to such limitations as the General Assembly may hereafter prescribe by law, counties may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. Real property used in agriculture shall be assessed at the same level of assessment as single family residential real property.²²

During the course of the debate which followed in the Committee of the Whole on his proposal, Delegate Karns answered several questions regarding the meaning and effect of his proposal. In this part of the debate, the following two exchanges took place between Delegate Karns and Delegates Leahy and Gertz:

Mrs. Leahy: Does your sentence “any such classification shall be reasonable and assessment shall be uniform with any class”, does that sentence provide the ability for challenges to assessments that do not exist today in Cook County?

Mr. Karns: I would say that it well might, Mrs. Leahy. As I understand the courts have picked on the expression determined by some person I believe, as “the General Assembly shall direct and not otherwise” as the — one of the reasons for denying judicial review. That type of provision, you will notice, is not in here.

Mrs. Leahy: [S]o you would see this sentence as providing some type of protection from arbitrary and capricious assessments, if such should exist?

Mr. Karns: Yes.

Mrs. Leahy: Thank You.

. . . .

Mr. Gertz: Now, earlier you suggested that judicial review might be possible. Would you be amenable to inserting some phrase or clause which would make judicial review more likely in certain circumstances?

Mr. Karns: I would not, personally, because I do not personally see the need for expanded judicial review. This is my own opinion in this matter —

Mr. Gertz: Wouldn't judicial review —

Mr. Karns: — but I certainly think it is possible under this provision. I would not spell it out any more than that — that it is not proscribed by the provision.

Mr. Gertz: Wouldn't judicial review be limited to fraud, and there might be other circumstances including unreasonable classification —

²² *Id.*, *Daily Jour.*, vol. 1 at 363 (1969-70).

Mr. Karns: Well, certainly fraud and unreasonable classification and perhaps other circumstances.

Mr. Gertz: Thank you.²³

These two conversations are the sole references to the question of judicial review of real property assessments in the legislative history of subsections 4(a) and 4(b) of article IX, the Revenue Article, of the 1970 Constitution.

It is a commonplace of statutory construction that where a statute is amended or revised, it will be presumed that the purpose of the amendment was to change the existing law.²⁴ There is no question but that the 1970 Illinois Constitutional Convention, by substituting section 4 of article IX as to real property taxation, and section 5 as to personal property taxation, intended to change substantially, indeed drastically, the constitutional provisions concerning the taxation of property, both real and personal, contained in section 1 of the Revenue Article of the 1870 Constitution.

It is also commonplace that it must be presumed that a legislature is cognizant of court decisions construing a law, and that drastic changes in the phraseology of a law which has been judicially construed indicate an intent to change that law.²⁵ As previously noted, the words "such value to be ascertained by some person or persons," contained in both the 1870 Constitution and the 1848 Constitution, had been construed by the courts in numerous decisions over more than a century as precluding direct judicial review of real property assessments and permitting indirect judicial review only where the taxpayer could show that the assessment was actually or constructively fraudulent. As stated by the Illinois Appellate Court:

When the Legislature revises a statute it must be presumed that the Legislature took cognizance of the prior decisions of the courts construing and interpreting the prior law. If, after a statute has been construed and interpreted, the Legislature makes radical changes in phraseology, an intention is thereby shown to establish a rule different from that announced by the courts. Where by amendment or revision, words are stricken from a statute it must be concluded that the Legislature deliberately intended to change the law.²⁶

Not only must it be presumed that the 1970 Constitutional Convention was cognizant of cases such as *Bistor v. Mc-*

²³ *Id.*, *Verbatim Transcripts*, vol. III at 2023 (1969-70).

²⁴ Sutherland, *STATUTES AND STATUTORY CONSTRUCTION* §22.30 (4th ed., Sands, 1972); *City of Chicago v. Jewish Consumptives Relief Society of Chicago*, 323 Ill. 389, 154 N.E. 117, 118 (1926).

²⁵ 34 ILLINOIS LAW AND PRACTICE, *Statutes* §161, n.11.

²⁶ *Town of The City of Champaign v. Overmeyer's, Inc.*, 18 Ill App. 2d 523, 152 N.E.2d 752, 754 (3d Dist. 1958).

Donough,²⁷ and the legal significance of the words "such value to be ascertained . . .", but the significance of those words and of the line of cases construing them was brought specifically to the attention of the Convention by the delegate who was both Chairman of the Committee on Revenue and Finance and sponsor of the proposal which was to become subsections 4(a) and 4(b) of the Revenue Article.²⁸ It is also clear from the Karns-Gertz colloquy that the failure to substitute for such words any other language restricting or defining the scope of judicial review of real property assessments also was deliberate.²⁹

Under these circumstances, the conclusion is inescapable that the 1970 Constitutional Convention knowingly and deliberately eliminated from the 1970 Constitution any and all restrictions on judicial review of real property assessments. Thus, in the constitutional commentary to section 4 of article IX it is noted: "[N]othing in Section 4 requires continuation of the doctrine developed by the courts under the 1870 Constitution that no judicial review is allowed with respect to individual assessments."³⁰ Significantly, the co-author of this constitutional commentary, Wayne W. Whalen, was a delegate to the Convention and Chairman of its Style, Drafting and Submission Committee, which was charged with putting the Revenue Article, and other articles, into final form. Accordingly, it would appear that, for the first time in 124 years, direct judicial review is now possible in Illinois from the valuation decisions of the assessing authorities. More specifically, no longer is it necessary in a separate proceeding to establish that the assessment in question was actually or constructively fraudulent.

Also, as indicated, the Convention declined to explain the precise extent of such expanded judicial review of the valuation made by the assessing authorities. Rather, in effect, this was left to the courts themselves. As an example, assume that a certain class of property is to be assessed at 50 percent of its actual value, and that the actual value of a certain parcel included within such class is \$100,000. The courts could intervene and reduce the assessment if the assessment were, say \$52,500; or they could decline to intervene and do so only if the discrepancy between the assessment made and the proper assessment was somewhat greater, say, \$60,000 rather than \$50,000. The matter would appear to be left completely to the sole discretion of the courts.

²⁷ 348 Ill. 624, 181 N.E. 417 (1932).

²⁸ Note 23 *supra*.

²⁹ *Id.*

³⁰ ILL. REV. STAT. CONST. art. IX, §4(b), Commentary, (1971).

And, of course, the courts could act if the Cook County Assessor, in assessing property, endeavored to act beyond his power by classifying property for purposes of taxation, or changing pre-existing classifications where he had no authority to do so, or in cases where a classification was challenged as unreasonable, or by violating the requirement that "assessment shall be uniform within each class."

The question naturally arises concerning the form of such proceedings for direct judicial review of the assessments made by the Cook County Assessor and Board of Appeals. The Administrative Review Act is by its terms inapplicable:

This Act shall apply to and govern every action to review judicially a final decision of any administrative agency where the Act creating or conferring power on such agency, by express reference, adopts the provisions of this Act. In all such cases, any other statutory, equitable or common law mode of review of decisions of administrative agencies heretofore available shall not be employed after the effective date hereof.³¹

Although the Revenue Act provides for an administrative appeal to the Board of Appeals, it fails to provide for any further administrative or judicial review.³² Moreover, the Act establishing the Property Tax Appeal Board, which does provide for review of the decisions of that board under the provisions of the Administrative Review Act, specifically does not apply to Cook County.³³

A proceeding in equity would appear inappropriate, at least initially. Equity jurisdiction in such cases, under the 1870 Constitution, was founded on the absence of an adequate remedy at law, by way of direct judicial review, and also on the basic requirement that to obtain any judicial relief, it was required that the taxpayer show actual or constructive fraud, long in itself an independent basis for equitable jurisdiction.³⁴ However, under the 1970 Constitution, direct judicial review of the decisions of the Cook County Board of Appeals is now possible, and a showing of fraud, either actual or constructive, is no longer necessary.

At present, pending action by the General Assembly pro-

³¹ ILL. REV. STAT. ch. 120, §265 (1971).

³² *Id.*, §§594-99 (1971).

³³ *Id.*, §592.1 (1971).

In any county other than a county of over 1,000,000 population, any taxpayer dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes, or any taxing body that has an interest in the decision of the board of review on an assessment made by any local assessing officer, may, within 20 days after the date of written notice of the decision of the board of review, appeal such decision to the Property Tax Appeal Board for review.

³⁴ *Bistor v. McDonough*, 348 Ill. 624, 181 N.E. 417 (1932).

viding some other remedy, as a proceeding under the Administrative Review Act, a taxpayer's remedy would appear to be by common law writ of *certiorari*. Thus, in *People ex rel. Brenza v. Chicago & North Western Ry.*,³⁵ a case involving the question whether the Tax Commission had correctly determined that certain property of a railroad was non-carrier real estate and as such assessable by local assessors, the court said:

We recognize that while section 138 of the Revenue Act, (par. 619) related to assessments made by the Tax Commission, it is quite evident that rule 18 of the Tax Commission was intended to provide for a review of the Tax Commission's classification of railroad property. *In any event, if no method of review is provided by statute or rule, the action of the Tax Commission may be tested or reviewed by the writ of certiorari, by requiring a production of the record to determine whether it has exceeded its powers.*³⁶

Jarman v. Board of Review,³⁷ relied upon by the supreme court in the *Brenza* case, involved the action of the Board of Review of Schuyler County in assessing alleged omitted personal property of the decedent for the years 1921 to 1928, inclusive. The circuit court quashed a writ of *certiorari* directed to the board of review, and the executrix of the estate appealed. The supreme court reversed and remanded with directions to quash the proceedings of the board of review, holding that its action in assessing property was judicial in nature and might be reviewed by the common law writ of *certiorari*, since no method of direct review was provided by statute. The court also rejected the argument that the writ of *certiorari* would not lie because an adequate remedy was available to appellant in the form of a bill in chancery to enjoin collection of the tax. The court noted that "where no fraud is charged against the board of review and all that is claimed is an illegal exercise of unquestioned powers, chancery is without jurisdiction."

However, there would appear to be serious inconveniences attached to reliance upon the common law writ of *certiorari* as the principal avenue of direct review of decisions of the Cook County Board of Appeals. Under this procedure, the reviewing court, that is to say, the Circuit Court of Cook County, would be *restricted* to a review of the record made before the Board of Appeals; thus, new evidence might not be considered.³⁸ Conse-

³⁵ 411 Ill. 85, 103 N.E.2d 85, 91 (1952).

³⁶ 345 Ill. 248, 178 N.E. 91 (1931) (emphasis added).

³⁷ For a similar result see *Stone v. Board of Review of Pike County*, 354 Ill. 286, 188 N.E. 430 (1933).

³⁸ *People ex rel. Fosse v. Allman*, 329 Ill. App. 296, 299-303, 68 N.E. 2d 203-06 (1st Dist. 1946); *Funkhaeser v. Coffin*, 301 Ill. 257, 260-61, 133 N.E. 649-50 (1922).

quently, both the taxpayer and the State's Attorney, representing the Cook County Assessor, would have to present their respective cases, in their entirety, at the hearings before the Board of Appeals. Neither could rely, as under the 1870 Constitution, upon the consideration that the proceeding in the circuit court would be a new proceeding, an equity suit predicated upon the contention that the challenged assessment was actually or constructively fraudulent.

There are about 1,259,000 separate parcels of real property in Cook County for assessment purposes, about one-fourth of which are reassessed each year.³⁹ Given the greatly increased scope of judicial review under the 1970 Constitution, it is probable that there will be a substantial increase in the number of suits challenging the assessments made each year by the Cook County Assessor. It is doubtful if a single tribunal, the Board of Appeals, could possibly give a full and adequate hearing in each case. More likely, the Board of Appeals would become a veritable "bottle neck," greatly complicating the extension and collection of real property taxes for years to come.

Admittedly, under the Administrative Review Act, the same result would follow were that Act applied without modification:

Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and of fact presented by the entire record before the court. *No new or additional evidence in support of or in opposition to said finding, order, determination or decision of the administrative agency shall be heard by the court.* The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct.⁴⁰

There is nothing to prevent the General Assembly, however, from providing that in proceedings under the Administrative Review Act to review decisions of the Board of Appeals, the circuit court could hear and consider additional evidence. Also, application of the Administrative Review Act would have the further and incidental advantage of obviating extensive historical research, by both the bench and bar, into the origins and evolution of the common law writ of *certiorari*.

Application of the Administrative Review Act to proceedings before the Board of Appeals, with an unrestricted right in both parties to adduce additional evidence before the circuit court, would shift, in effect, the primary or initial burden of

³⁹ Note 23 *supra* at 2009.

⁴⁰ ILL. REV. STAT. ch. 120, §274 (1971) (emphasis added).

trying contested valuation cases from the Board of Appeals to the circuit court. Such a transfer appears inevitable, however, considering the greatly increased scope of judicial review under the 1970 Constitution. The Circuit Court of Cook County has the personnel to establish numerous tribunals for this purpose. The Board of Appeals, which is but a single tribunal, cannot be expected to cope with the volume of litigation, regarding the valuation of real property for tax purposes, which is almost certain to arise in Cook County under the new Revenue Article.

It should be noted that proceedings under the Administrative Review Act would be largely limited to valuation questions. Challenges to "legislative" decisions under subsection 4(b), such as the "reasonableness" of the classifications adopted, would appear to require a different procedure, such as a suit for an injunction or for a declaratory judgment.⁴¹

*B. The Effective Date of the New Revenue Article,
and of State and Local Legislation Thereunder*

The Illinois Constitution of 1970 took effect, with exceptions which are not here relevant, on July 1, 1971.⁴²

In Illinois, the Revenue Article provides that the liability for real estate taxes attaches and becomes a lien on January 1 of each year, although the tax is not due and payable until the succeeding year.⁴³ Thus, real property taxes for the year 1971 attached and became a lien on January 1, 1971, although they were not due and payable until well into 1972. Similarly, real estate taxes for the current year, 1973, attached and became a lien January 1, 1973, even though they will not be due and payable until next year, 1974.

The Illinois Supreme Court had occasion to consider the interrelationship of these two provisions in *Doran v. Cullerton*,⁴⁴ This case involved the so-called homestead exemption; an exemption of \$1,500 assessed valuation of "real property that is occupied as a residence by a person 65 years of age or older who is liable for paying real estate taxes on the property and is the owner of record of the property or has a legal or equitable interest therein . . . except for a leasehold interest." The statute granting the exemption specifically stated that it applied to assessments for the year 1971 for taxes payable in 1972, and for all subsequent years thereafter.

⁴¹ Artz v. Comm. Nat'l Bk. of Peoria, 125 Ill. App. 2d 86, 259 N.E.2d 813-14 (3d Dist. 1970).

⁴² Doran v. Cullerton, 51 Ill. 2d 553, 557, 283 N.E.2d 865-67 (1972).

⁴³ ILL. REV. STAT. ch. 120, §508(a) (1971).

⁴⁴ 51 Ill. 2d 553, 283 N.E.2d 865 (1972).

The supreme court, in *Hoffman v. Lehnhausen*,⁴⁵ had previously held such an exemption to be unconstitutional under the 1870 Constitution. However, section 6 of article IV of the 1970 Constitution specifically provided that "the General Assembly by law may grant homestead exemptions or rent credits."⁴⁶

In *Doran*, the court held the homestead exemption statute valid for assessments made in 1972 and subsequent years, and invalid for assessments made in 1971 for taxes payable in 1972. The court advanced two reasons for its decision. First, under the 1870 Constitution, the statute was clearly unconstitutional for the half year prior to July 1, 1971, the effective date of the 1970 Constitution, and there was no indication that the legislature intended the exemption to be effective for only part of a year. Secondly, that even if the legislature had so intended, the Exemption Act would still be invalid for the entire year 1971 by reason of the January 1 lien date.

Additionally, the date upon which real estate is assessed in the State of Illinois is January 1 of each year (Ill. Rev. Stat. 1971, ch. 120, par. 508a), and since on January 1, 1971, the Illinois constitution of 1870 was the paramount law of this State, the homestead exemption is not applicable for any portion of the year in question.⁴⁷

The implication of this latter aspect of the court's holding is that no change in the real property law, which shifts the burden of tax from one class to another, in this case from owners of residential real property who are 65 years or older to all other real property owners, is valid for a given assessment year unless such change is made prior to January 1 of that year.

⁴⁵ 48 Ill. 2d 323, 269 N.E.2d 465 (1971).

⁴⁶ ILL. CONST. art. IX, §6 (1970).

⁴⁷ 51 Ill. 2d 558, 283 N.E.2d at 867.

A county ordinance probably could adopt, or modify, retroactively, a system for the classification of real property for purposes of taxation without contravening the Constitution of the United States. See *Walsh v. Henry*, 305 U.S. 134, 147-48 (1938). And in *Thorpe v. Mahin*, 43 Ill. 2d, 633, 250 N.E.2d 633, 641 (1969), the supreme court quoted with apparent approval, this somewhat delphic statement: "Although it is the rule generally recognized that revenue laws may be retroactive, it is also true that there is a point of time when such retroactivity is beyond the legislative power." See *City Nat'l Bk. of Clinton v. Iowa State Tax Comp.*, 251 Iowa 603, 102 N.W.2d 381, 383 (1960); *Commonwealth v. Budd Co.*, 379 Pa. 159, 108 A.2d 563, 568-69 (1954).

However, as indicated in *Doran v. Cullerton*, the supreme court implies that it will impose a more restrictive test under the Illinois Constitution of 1970 than would be required by the Constitution of the United States. If so, this would not be the first such development in the historic relationship between the Supreme Court of Illinois and the Supreme Court of the United States. See *Heimgaertner v. Benjamin Electric Mfg. Co.*, 6 Ill. 2d 152, 157-58, 128 N.E.2d 691, 695 (1955) ("pay-while-voting" statute); cf. *Day-Bright Lighting, Inc. v. Missouri*, 342 U.S. 421 (1952). See also *Lake Shore Auto Parts Co. v. Korzen*, 49 Ill. 2d 137, 273 N.E.2d 592 (1971), *rev'd sub nom.* *Lehnhausen v. Lake Shore Auto Parts Co.*, 93 S. Ct. 1001 (1973) (Validity of Illinois constitutional provision exempting personal property of individuals only from ad valorem taxation).

With respect to subsection 4(b) of the Revenue Article and the five counties other than Cook, with populations of more than 200,000, which presumably did not classify real property for purposes of taxation prior to July 1, 1971, this would mean that under *Doran* they could not classify for the assessment year 1971. Further, that if they wished to do so for the assessment year 1972, they would have to make such election and adopt a system of classification prior to January 1, 1972.

With respect to Cook County, the provision in subsection 4(b) — “or to continue to classify real property for purposes of taxation,” would appear to indicate that Cook County could elect to keep a classification system in effect during the assessment year 1971. In brief, there would not necessarily exist in Cook County a one-year hiatus, 1971, between the years 1970 and prior, when there was in effect a *de facto* system of classification, and the years 1972 and subsequent, when there might be classification *de jure*.

But even as to Cook County, the *Doran* case would appear to pose certain problems for the future. Specifically, any change in the classification system would have to be made prior to the start of a year if such change were to be effective for that year. Thus, if it was desired to reduce assessments on single-family homes from 25 to 20 percent of actual value, with no like change in the percentages applicable to other classes of real property, such reduction would have to be made prior to January 1, 1974, if it was to be applicable for the assessment year 1974, even though taxes for that year would not be payable until 1975.

In one respect, however, section 4 of the Revenue Article of the 1970 Constitution would appear to have a retroactive effect, notwithstanding the effective date of July 1, 1971 for the Constitution and the lien date of January 1, 1971 for 1971 real property taxes.

As previously noted, classification of property for purposes of taxation was not authorized by the Revenue Article of the 1870 Constitution, which instead mandated a uniform non-classified property tax. Classification of real property for purposes of taxation existed in Cook County, *de facto* but not *de jure*, solely because of the restrictions placed upon judicial relief for aggrieved taxpayers by the words — “such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise,” and the construction placed upon those words by the courts.

There was no question but that the owner of property as-

essed at 75 percent of its fair market value, while the prevailing or average level of assessment was 50 percent of fair market value and numerous other properties were being assessed at but 25 percent of their fair market value, was thereby deprived of his rights under the 1870 Constitution, and suffered in a very real and practical sense, a legal wrong. It was merely that he lacked an effective judicial remedy to compel the responsible public officials, the Cook County Assessor and Board of Appeals, to obey the Constitution and the Revenue Act.

The so-called "Railroad Cases" of the early 1960s demonstrated that given years of effort and sufficient incentive, determined taxpayers and ingenious counsel could find a way to compel recalcitrant assessing officials to obey the constitutional mandate as to uniform taxation of real property.⁴⁸

Accordingly, it would appear that the change in Illinois law resulting from the deliberate elimination from the Revenue Article, in the 1970 Constitution, of the magic words — "such value to be ascertained", falls within the rule that when a change of law merely affects the remedy or law of procedure, all rights of action will be enforceable under the new procedure, without regard to whether they accrued before or after such change of law and without regard to whether the action had already been instituted.⁴⁹

The traditional objection to retroactive application of a new law, that such application would violate vested rights, is inapplicable.⁵⁰ Neither those benefiting from the *de facto* system, nor the assessing officials themselves, can be heard to say that they had a vested right in the systematic and deliberate violation of the Illinois Constitution of 1870.

It would appear, therefore, that in all pending cases involving Cook County and real property taxes for 1971 and prior years, the procedural restrictions of the 1870 Constitution no

⁴⁸ *People ex rel. Korzen v. Chicago, Burlington and Quincy R.R.*, 32 Ill. 2d 554, 209 N.E.2d 649 (1965); *People ex rel. Musso v. Chicago, Burlington and Quincy R.R.*, 33 Ill. 2d 88, 210 N.E.2d 196 (1965); *People ex rel. Wenzel v. Chicago and North Western R.R.*, 28 Ill. 2d 205, 190 N.E.2d 780 (1963); *People ex rel. Enrietta v. Gulf, Mobile and Ohio R.R.*, 29 Ill. 2d 605, 195 N.E.2d 174 (1963); *People ex rel. Dallas v. Chicago, Burlington and Quincy R.R.*, 26 Ill. 2d 292, 186 N.E.2d 335 (1962); *People ex rel. Hillison v. Chicago, Burlington and Quincy R.R.*, 22 Ill. 2d 88, 174 N.E.2d 175 (1961); *People ex rel. Kohorst v. Gulf, Mobile and Ohio R.R.*, 22 Ill. 2d 104, 174 N.E.2d 182 (1961). See Wattling, *Taxation of Real Property in Cook County — The "Railroad Cases" and Future of De Facto Classification*, 1 JOHN MAR. J. OF PRAC. & PROC. 212, 250-63 (1968).

⁴⁹ 34 ILLINOIS LAW AND PRACTICE, *Statutes* §194 (1958); *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); *Ogdon v. Gianakos*, 415 Ill. 591, 597, 114 N.E.2d 686, 690 (1953).

⁵⁰ See 34 ILLINOIS LAW AND PRACTICE, *Statutes* §193 (1958); *Nelson v. Miller*, 11 Ill. 2d 378, 383, 143 N.E.2d 673, 676 (1957); *United States v. Bradley*, 83 F.2d 483-85 (7th Cir. 1936).

longer apply; and specifically, it is no longer necessary to prove actual or constructive fraud. That is to say, a taxpayer would be entitled to relief if he could show any appreciable variance between the percentage of actual value at which his property was assessed and the average or prevailing level of assessment in Cook County for the assessment year in controversy.

*C. Locus of Power To Classify Real Property
for Purposes of Taxation*

The first sentence of subsection 4(b) of article IX, the Revenue Article, of the 1970 Constitution provides as follows:

[S]ubject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation.⁵¹

This language clearly grants two types of options to the six counties which presently have a population of more than 200,000:

1. In the case of the five counties other than Cook, having populations in excess of 200,000, the option to classify real property for purposes of taxation.
2. In the case of Cook County, the option to continue to classify real property for purposes of taxation.

The options under section 4(b), to classify or to continue to classify real property for purposes of taxation are granted to "counties." It is axiomatic that the powers of the county as a body corporate or politic are exercised by the County Board, and that a county can act only through its board.⁵² Accordingly, it would appear that the power to classify or to continue to classify real property in Cook County for purposes of taxation is vested in the Cook County Board.

A further reason for concluding that the power granted to Cook County under subsection 4(b) is vested in the County Board and not in the County Assessor is the consideration that the Cook County Assessor is not a true constitutional officer since his office is not necessarily a permanent fixture of county government. Under subsection 4(c) of article VII of the 1970 Constitution, the office of County Assessor of Cook County could be abolished at any time by a county-wide referendum or by a statute passed by the General Assembly.⁵³ The power granted by subsection 4(b) of article IX is of great importance.

⁵¹ ILL. CONST. art. IX, §4(b) (1970).

⁵² 14 ILLINOIS LAW AND PRACTICE, *Counties* §18 (1958); *Hardin v. County of Sangamon*, 71 Ill. App. 103, 111 (3d Dist. 1896); *Sexton v. County of Cook*, 114 Ill. 174, 179-80 28 N.E. 608-09 (1885).

⁵³ ILL. CONST. art. VII, §4(c) (1970).

It is hardly conceivable that the Constitution would vest it in an official whose office might at any time cease to exist. On the other hand, under subsection 3(b) of article VII, a county board is to be elected in each county.⁵⁴

Moreover, the Constitutional Convention had before it an example of a Revenue Article vesting considerable powers with respect to the classification of real property in the County Assessor of Cook County. Section 13 of the proposed Revenue Article, submitted to the voters at the General Election of November, 1966, was a "grandfather" provision preserving generally, and legalizing, the *de facto* classification system as it then existed in Cook County. The section also granted the County Assessor of Cook County broad discretionary power, within certain limits, to modify that system.⁵⁵ Thus, the Constitutional Convention had before it a precedent, so to speak, for vesting such powers in the County Assessor, and saw fit not to follow it.

The legislative history of subsection 4(b) on this question is somewhat ambiguous,⁵⁶ but it indicates that the power to classify or to continue to classify is presently in the Cook County Board, subject, possibly, to transfer to the County Assessor, either by Act of the General Assembly or by ordinance of the County Board delegating all or part of such power.

The proposed Revenue Article, submitted by the Committee on Revenue and Finance, provided with respect to the classification of real property for purposes of taxation, that: "any county over 200,000 population is authorized to classify real property for taxation purposes."⁵⁷

The committee report in turn contained this comment:

[A] county of more than 200,000 population may continue its

⁵⁴ ILL. CONST. art. VII, §3(b) (1970).

⁵⁵ H. R. JOUR. RES. No. II, L. 3780-83, §13 (1965).

⁵⁶ Of course, reference to the legislative history of subsection 4(b) is itself in order only if the meaning of that subsection can be said to be doubtful or ambiguous. In *Burke v. Snively*, 208 Ill. 328, 70 N.E. 327 (1904), the court stated:

The constitution of a State derives its force and authority from the vote of the people adopting it. For that reason it is a general rule that in construing the provisions of a constitution the words employed therein shall be given the meaning which they bear in ordinary use among the people. The natural and ordinary meaning of the word is to be accepted except where a word is used the meaning whereof is established by statute or by judicial construction.

In construing constitutional provisions the true inquiry is, what was the understanding of the meaning of the words used by the voters who adopted it? Still, the practice of consulting the debates of the members of the convention which framed the constitution, as aiding to a correct determination of the intent of the framers of the instrument, has long been indulged in by courts as aiding to a true understanding of the meaning of the provisions that are thought to be doubtful.
Id. at 340, 344-45.

⁵⁷ Note 21 *supra*.

present classification practices or establish a system of classification by action of the county governing board without any further approval from the General Assembly.⁵⁸

Thus, the Convention's Committee on Revenue and Finance clearly was of the opinion that where a county was empowered to classify real property for purposes of taxation, such power was vested in the county board.

During the debate in the Committee of the Whole, Delegate Knetch, the Vice Chairman of the Committee on Revenue and Finance, moved to amend the Committee's proposal by substituting the words — "The county board of any" for the word "any", so that it would be explicit that the power to classify was in the county board.⁵⁹ The amendment was debated at some length, and adopted by a vote of 59 in favor to 41 opposed.⁶⁰ During the debate, Delegate McCracken, who might be described as the Convention spokesman for the Cook County Assessor, opposed the Knetch amendment on the ground that he believed that the Assessor should be the official possessing the power to classify real property.⁶¹ Other delegates expressed the opinion that the amendment was unnecessary, since the power was clearly in the county board under the Committee's language, and that the Knetch amendment would deprive the General Assembly of the power, which it would otherwise have, to designate the official or officials, county board or assessor, who would have the power to classify real property for purposes of taxation in counties where such classification was permissible.⁶²

Subsequently, the Karns "compromise" was substituted for the Committee proposal. Delegate Knetch again proposed an amendment that the power to classify be vested explicitly in the county board,⁶³ which after a brief debate was defeated by a voice vote.⁶⁴ The principal argument against the amendment was that there might not always be a county board, and that the power should therefore not be vested in a body which might cease to exist.⁶⁵

At no time during the debates on the two Knetch amendments was it suggested that either the original Committee draft or the Karns compromise would themselves vest the power to classify in the assessor.⁶⁶ At most, it would appear that several

⁵⁸ *Id.* at 2108.

⁵⁹ Note 23 *supra* at 1989.

⁶⁰ *Id.* at 1997.

⁶¹ *Id.* at 1990-91.

⁶² *Id.* at 1991-97.

⁶³ *Id.* at 2023-24.

⁶⁴ *Id.* at 2024.

⁶⁵ *Id.*

⁶⁶ *Id.* at 1989-97, 2023-24.

delegates thought that the General Assembly by statute, or the Cook County Board by ordinance, would be able to vest in the Cook County Assessor the power to classify real property for purposes of taxation.

Absent such legislation, however, and there has been none at either the state or county level, the power to classify would appear clearly to be in the Cook County Board and not in the Cook County Assessor.

With regard to the power of the General Assembly, attention should also be given to a proposed real estate assessment plan or system advanced early this year by Mr. Harry Semrow, a member of the Cook County Board of Appeals, and Senator Cecil Partee, the Minority Leader of the Illinois Senate. Their plan, calculated to encourage the erection of new buildings and the improvement of existing ones, would provide essentially as follows:

1. New buildings would be assessed at 20 percent of the regular rate the first year after completion, at 40 percent the second year, and so forth; only for the fifth year after completion and subsequent years would the structure be assessed at 100 percent of the regular rate.
2. The increase in the value of existing structures resulting from improvements would be treated in the same manner as the cost of new buildings for assessment purposes.

This assessment plan or system would be adopted by the General Assembly through a general law applicable to all 102 counties of the State.⁶⁷

The Semrow-Partee proposal, whatever its other merits or demerits, is subject to a fatal defect; it is blatantly unconstitutional. There would seem to be no question that the Semrow-Partee proposal on its face involves a classification of real property for purposes of taxation. New construction and improvements less than one year old would be assessed and taxed at 20 percent of the rate applicable to like construction or improvements which are four years or more in age. Similarly, there would be a separate class for structures that were more than one year but less than two years old, and so forth.

With reference to real property, subsection 4(b) of the Revenue Article restricts classification of real property for purposes of taxation to some six counties: Cook and the other five counties having populations in excess of 200,000. As to the other 96 counties, there is no power in anyone to classify real

⁶⁷ Chicago Daily News, Feb. 28, 1973, at 7, col. 2, *Id.* Jan. 12, 1973, at 12, col. 1.

property for purposes of taxation. They are instead governed by subsection 4(a) which mandates that “. . . taxes upon real property shall be levied uniformly by valuation. . . .”⁶⁸

As to the six counties where classification of real property for purposes of taxation is permitted, such classification is optional. The decision to classify or not to classify in each case would appear plainly to lie not with the General Assembly, but with the legislative body of each of the counties; the several county boards.

Under subsection 4(b), the power of the General Assembly, with reference to the six counties where classification of real property for purposes of taxation is permitted, is restricted by these words: “Subject to such limitations as the General Assembly may hereafter prescribe by law. . . .”⁶⁹ That is to say, the General Assembly’s power is strictly negative. It may not compel any of the counties in question to classify real property for purposes of taxation nor may it forbid any of them to do so. Its power is restricted to those of the six counties which do elect to classify real property for purposes of taxation; as to them, the General Assembly may impose “limitations” on the classification systems they choose to adopt.

With specific reference to the Semrow-Partee plan or system, a county, for example, Cook, might elect to classify real property for purposes of taxation, and the General Assembly probably could proscribe adoption of that particular plan or system. Yet, it could not impose the proposed plan or system upon the county.

D. Uniformity Requirement and the Quadrant System of Assessment

Subsection 4(b) of the present Revenue Article provides as follows:

- (b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.⁷⁰

⁶⁸ ILL. CONST. art. IX, §4(a), (b) (1970).

⁶⁹ *Id.* §4(b) (1970).

⁷⁰ *Id.*

This subsection, particularly the last sentence thereof, and also the preceding sentence relating to the maximum variance between classes, clearly contemplates that classification will be made on a county-wide basis; the same rules for classifying property would apply throughout the county. Of course, the requirement that "assessments shall be uniform within each class" also would have a county-wide application.

Similar language was contained in the Revenue Article of the 1870 Constitution with respect to non-property taxes. The second clause of section 1 provided that the "General Assembly shall have power to tax peddlers, auctioneers, brokers . . . in such manner as it shall from time to time direct by general law *uniform as to the class upon which it operates.*"⁷¹ Moreover, it was early held that this language entailed state-wide uniformity as to any tax imposed by the General Assembly pursuant to that clause.⁷²

This requirement for county-wide uniformity may cause considerable distress, particularly since the Cook County Assessor has recently proceeded to make substantial changes in the classification system heretofore in effect.

Cook County is divided into four areas, or quadrants, for purposes of real property assessment. Property in each quadrant is in turn reassessed every four years.⁷³ Thus, in 1972 the Assessor reassessed the property in the so-called north quadrant, the area of Chicago north of the main branch of the Chicago River and several of the north suburbs. In 1973 he is to reassess the property in the northwest quarter of the city and in the northwest suburbs; in 1974 the west quadrant, and in 1975 property in the south quadrant⁷⁴ will be reassessed.

Prior to 1972 the Cook County Assessor grouped real property into some forty-four classes for assessment purposes.⁷⁵ Each class was assessed pursuant to various formulas contained in a manual used by the Assessor's office.⁷⁶ These formulas resulted in valuations for assessment purposes which had no necessary relationship to the market value of the property.⁷⁷

Early in 1972, the Real Estate Research Corporation submitted a report to the Cook County Assessor recommending

⁷¹ ILL. CONST. art. IX, §1 (1870) (emphasis added).

⁷² State R.R. Tax Cas., 92 U.S. 575, 611-12 (Ill. 1875).

⁷³ ILL. REV. STAT. ch. 120, §524 (1971).

⁷⁴ ICCH STATE TAX REP., 111, ¶22-107A (1969).

⁷⁵ Chicago Sun-Times, April 18, 1972, at 3, col. 1; *but see* statement of Delegate McCracken that only five categories intentionally assessed at different levels. Note 23 *supra* at 2006.

⁷⁶ Note 23 *supra* at 2006.

⁷⁷ Chicago Daily News, May 5, 1972, at 5, col. 3.

substantial changes in the assessment practices of his office. The number of classes was to be sharply reduced to, say, a total of eight. Property in each class would then be assessed at specified percentages of fair market value, within the variance limitations of subsection 4(b).⁷⁸ Thus, if the lowest assessed class was assessed at 20 percent of fair market value, the other seven classes would be assessed at ascending percentages of fair market value to a maximum of 50 percent for the highest assessed class.

The Assessor's office announced that it intended to accept the recommendations of this report, and apply the new system to the assessment which it would make in the north quadrant during the year 1972.⁷⁹ It soon became apparent that the new assessment formula was producing higher assessed values than before; higher assessments, in many instances, than would have been the case under the classification system used by the Assessor's office in prior years.⁸⁰

It would seem clear, therefore, that in Cook County, assessments are not "uniform within each class" as required by subsection 4(b) of the Revenue Article. Specifically, assessments in the north quadrant are on a basis different from those currently in effect in the remaining three quadrants, which were assessed under the old system. Assuming that the Assessor's office continues with its new approach during 1973, in connection with its reassessments of real property in the northwest quadrant, property in that quadrant will likewise be on a basis different from those that will still be in effect in the west and south quadrants. This situation will continue through the year 1975, by which time all real property presumably will have been reassessed according to the same classification system, and assessments will be "uniform within each class" on a county-wide basis, as required by subsection 4(b) of the Revenue Article.⁸¹

Until such point is reached, however, those assessed pursuant to the new classification system would appear to have a valid objection to the assessed values placed upon their property, if those values exceed the amounts which would have been reached under the classification system and formulas employed by the Assessor's office in 1971 and prior years.⁸²

⁷⁸ *Id.* May 13, 1972, at 10, col. 5; *Id.* May 11, 1972, at 7, col. 2.

⁷⁹ *Id.* May 5, 1972, at 5, col. 3.

⁸⁰ *Id.* May 10, 1972, at 1, col. 4.

⁸¹ ILL. CONST. art. IX, §4(b) (1970).

⁸² Once the Cook County Assessor has determined, by the end of the year 1975, the fair market value of all parcels of real property in Cook County, it should thereafter be possible, although cumbersome, to modify the classification systems — as by increasing or decreasing the percentage of

Here, too, would appear to be a source of substantial litigation for the next several years.

IV.

ACTION BY COOK COUNTY AUTHORITIES UNDER THE REVENUE ARTICLE OF THE 1970 CONSTITUTION

The operative words of subsection 4(b) of the Revenue Article are largely confined to the following: “[c]ounties with a population of more than 200,000 may classify real property for purposes of taxation.”⁸³ This language very clearly grants two types of options to counties:

1. In the case of the five counties, other than Cook, having populations in excess of 200,000, the option to classify real property for purposes of taxation.
2. In the case of Cook County, the option to continue to classify real property for purposes of taxation.

In the event of failure by any of these counties to exercise the option, taxation of real property in that county would appear to be governed by the general provision of subsection 4(a): “Except as otherwise provided in this section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.”⁸⁴ That is to say, real property in such a county would be assessed and taxed on a non-classified basis.

Insofar as Cook County is concerned, the question whether the county would or would not exercise its option to continue to classify real property for purposes of taxation was for the Cook County Board to decide. Certainly, for reasons already adumbrated, this was not a matter to be decided by the Cook County Assessor.⁸⁵

Also, as previously discussed, absent either a state law or a county ordinance vesting such power in him, the Cook County Assessor lacks the power, under subsection 4(b), to classify real property for purposes of taxation; that is to say, to make changes in the classification system that is in effect, if in fact one be in effect.⁸⁶

The Cook County Board has not yet taken any formal action “to continue” in effect the *de facto* system of classifi-

actual value at which various classes are assessed — as to all the land in the county in a single year; and, of course, if this were done, there would be no violation of the uniformity clause of subsection 4(b).

⁸³ ILL. CONST. art. IX, §4(b) (1970).

⁸⁴ *Id.* §4(a).

⁸⁵ See pp. 105-109 *supra*.

⁸⁶ *Id.*

cation in existence on July 1, 1971, the effective date of the present Constitution.⁸⁷

In March, 1972, Michael L. Igoe Jr., the Secretary of the Cook County Board, wrote Edward V. Hanrahan, the State's Attorney of Cook County, requesting his opinion whether: "1) it is or is not the duty of the County Board to classify real estate for the purposes of taxation; or 2) it is or is not the duty of the Assessor of Cook County to classify real estate for the purpose of taxation."⁸⁸ Under date of March 20, 1972 the State's Attorney responded with his legal opinion, wherein, after quoting subsection 4(b) of article IX and subsection 4(d) of article VII, he concluded:

Based on these constitutional provisions and the absence of any statutory provisions requiring such classification, I am of the opinion that neither the County Board nor the Assessor of Cook County has any duty to classify real property for tax purposes.

Historically, the Assessor of Cook County has classified real property for taxation purposes. The recent Constitutional Convention recognized that fact, and both Article IX, section 4(b) and Article VII, section 4(d) of our present constitution allow the County Assessor to continue this practice.

However, pursuant to Article VII, section 4(d) of the present constitution, the County Board has been given the power to *alter* functions historically performed by the County Assessor. It has been given the power and may also establish a system of classification of real property for taxation purposes pursuant to Article IX, section 4(b) of the present Constitution. Consequently, the County Board can, if it desires, pass a real property classification ordinance.

In the event that the County Board passes such a classification ordinance, or an ordinance prohibiting classification of real property for taxation purposes, it would be binding upon the Assessor of Cook County.⁸⁹

Subsequently, the Finance Committee of the Cook County Board held a hearing on the subject of classification of real property, at which appeared representatives of some twelve to fifteen civic and taxpayer groups.⁹⁰

Then, on April 3, 1972, the Cook County Board adopted the following resolution:

NOW, THEREFORE, BE IT RESOLVED, that the Cook County Board directs the Assessor to submit, after consulting with representatives of the groups who appeared at the public hearing

⁸⁷ See *Doran v. Cullerton*, 51 Ill. 2d 553, 557, 283 N.E.2d 865-67 (1972).

⁸⁸ OP. STATE'S ATT'Y OF COOK COUNTY No. 1402 (March 20, 1972).

⁸⁹ *Id.*

⁹⁰ BD. OF COMM'RS OF COOK COUNTY JOUR. OF PROCEEDINGS at 2567 (April 3, 1972).

and any other group or individual having an interest in the classification of real estate, a recommendation for the classification of real estate in Cook County as soon as possible.⁹¹

During the summer of 1972, the office of the Cook County Assessor held a series of public hearings, with a professor of law as hearing officer, to consider the question of the classification of real property in Cook County. At these hearings individuals and representatives of several groups presented their views concerning the classifications which should be established, and the varying percentages of actual value which should be employed in assessing different types of classes of property.⁹²

There has been no public announcement, to April 1, 1973, that the Cook County Assessor has made a recommendation to the Cook County Board for the classification of real estate in Cook County as required by the County Board's resolution of April 3, 1972. Nonetheless, as previously noted, the Cook County Assessor has proceeded to make substantial changes in the classification system in effect prior to January 1, 1972.⁹³ And the County Board has yet⁹⁴ to adopt any resolution electing to continue the *de facto* classification system effective July 1, 1971, or making any changes in that system, or delegating to the Cook County Assessor the power to make such changes.

In evaluating the legal significance of the above happenings or nonhappenings, the following must be kept in mind.

First, the County Board Resolution of April 3, 1972 was clearly not a delegation to the Cook County Assessor of all or any part of the County Board's power to classify real property for purposes of taxation. The Cook County Assessor was directed merely to consult with interested groups and "to submit . . . a recommendation for the classification of real estate in Cook County." Nor can the Resolution be read as a final decision by the County Board that there should or should not be classification of real property for purposes of taxation.⁹⁵

Second, the reliance of the State's Attorney on section 4(d) of article VII would appear to be misplaced. Subsection (d) provides that:

(d) County officers shall have those duties, powers and

⁹¹ Bd. of Comm'rs of Cook County Res. 72-R-142, Jour. of Proceedings at 2567 (April 3, 1972).

⁹² Chicago Sun-Times, Sept. 8, 1972, at 84, col. 1; *Id.* Aug. 18, 1972, at 82, col. 2; Chicago Daily News, Aug. 3, 1972, at 1, col. 4; Chicago Tribune, July 28, 1972, sec. 2, at 10, col. 3; Chicago Daily News, Aug. 3, 1972, at 1, col. 4.

⁹³ Chicago Daily News, May 13, 1972, at 10, col. 5.

⁹⁴ *Id.* Mar. 1, 1973, at 7, col. 1.

⁹⁵ Note 91 *supra*.

functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.⁹⁶

On the basis of this subsection, the State's Attorney concluded:

Historically, the Assessor of Cook County has classified real property for taxation purposes. The recent Constitutional Convention recognized that fact, and both Article IX, section 4(b) and Article VII, section 4(d) of our present Constitution allow the County Assessor to continue this practice.⁹⁷

As previously shown, the wording and legislative history of article IX, section 4(b) is conclusive that the power therein granted to classify real property for purposes of taxation is vested, at least in the first instance, in the County Board, and not in the County Assessor. The power might be transferred or delegated, however, to the Assessor by statute or county ordinance, but this has not been done.⁹⁸ And, of course, on this basis subsection 4(d) of article VII is inapplicable. It is a well-established rule of construction that where an enactment contains two provisions, one general and the other particular, and both relate to one subject, the particular or specific provision must prevail and be treated as an exception to the general rule.⁹⁹ In this case, subsection 4(b) of article IX, dealing with the classification of real property in certain counties, is clearly the particular provision, while subsection 4(d) of article VII, dealing with the powers of all county officers and all counties, is the general provision within the purview of this rule.

The legislative history of article VII, subsection 4(d) also indicates that it is unavailable to support any claims by the County Assessor that he is empowered, absent a statute or ordinance, to classify real property pursuant to subsection 4(b) of the Revenue Article. Subsection 4(d) of article VII was aimed at a series of decisions under the 1870 Constitution involving sheriffs and county treasurers, which had held that where the Constitution established an office without prescribing the duties of the officer holding it, and the office was of common law origin or long standing, then in that event the General Assembly was without authority to revoke any of the powers and duties of the officer as they had existed at the time

⁹⁶ ILL. CONST. art. VII, §4(d) (1970).

⁹⁷ Note 88 *supra*.

⁹⁸ See pp. 94-101 *supra*.

⁹⁹ *Ashton v. County of Cook*, 384 Ill. 287, 51 N.E.2d 161, 165-66 (1943); *People ex rel. Fore v. Missouri, Pac. R.R.*, 342 Ill. 226, 173 N.E.2d 816-17 (1930); *Havlik v. Marcin*, 270 N.E.2d 189, 191 (1st Dist. 1971).

of the adoption of the Constitution.¹⁰⁰ Under subsection 4(d),¹⁰¹ these decisions are inapplicable since such common law or customary powers or duties can be altered either by statute or by county ordinance.

These decisions, however, whatever their applicability to other powers, functions, or duties of the Cook County Assessor, would not be applicable to the question of the power of the assessor to classify real property for purposes of taxation under the present Constitution, for the present Constitution dealt both specifically and negatively with this question. On the one hand, the new Revenue Article eliminated the restrictions on direct judicial review of real property assessments upon which the *de facto* system of classification had been based. It destroyed the legal foundations, such as they were, for the *de facto* classification of real property by the Cook County Assessor.¹⁰² Phrased somewhat differently, to the extent that there was an historical precedent for classification of real property by the Cook County Assessor, it had been predicated solely on certain words in the Revenue Article of the 1870 Constitution — “. . . such value to be ascertained by some person or persons . . .”, which were omitted deliberately from the Revenue Article of the present Constitution.

On the other hand, subsection 4(b) of the new Revenue Article substituted for the *de facto* system thus destroyed an optional *de jure* system, and vested the power to classify in the county board and not in the county assessor.¹⁰³

Under these circumstances, it would in no event be necessary to look to historical precedent to determine what powers the county assessor had with respect to the classification of real property. Subsection 4(b) of the Revenue Article is clear that he has none, unless the county board sees fit to delegate some or all of its powers to him.

Moreover it should be remembered that the classification of real property for purposes of taxation by the Cook County Assessor was at all times contrary to the Revenue Article of the 1870 Constitution and the Revenue Act.¹⁰⁴ Indeed, after cases such as *Aldrich v. Harding*¹⁰⁵ had shown that it was le-

¹⁰⁰ REC. OF PROC., SIXTH ILL. CONST. CONV., *Comm. of Loc. Gov't Maj. Prop.*, Vol. VII at 1708-10 (1969-70); *Id.*, *Verbatim Transcripts*, Vol. IV at 3287-92 (1969-70). See *People ex rel. Walsh v. Bd. of Comm'rs of Cook County*, 397 Ill. 293, 74 N.E.2d 503 (1942); *People ex rel. County of Du Page v. Smith*, 173 N.E.2d 485, 492-93 (1961); *Dahnke v. People*, 168 Ill. 102, 48 N.E. 137 (1897).

¹⁰¹ ILL. CONST. art. VII, §4(d) (1970).

¹⁰² See pp. 83-93, *supra*.

¹⁰³ See pp. 105-109, *supra*.

¹⁰⁴ See pp. 88-93, *supra*.

¹⁰⁵ 340 Ill. 354, 358-60, 172 N.E. 772, 774-75 (1932); *People ex rel.*

gally fatal to admit that real property was being so classified, the assessor and his staff apparently took pains to deny, in court, that they were doing so. As recently as December, 1972, in a case involving the 1971 assessments of certain parcels of realty, present and former members of the assessor's staff admitted that real property was classified for tax purposes. Within a few days, most of them returned and in open court recanted their prior testimony to this effect.¹⁰⁶ It would seem that a practice so clearly illegal that its very existence had to be denied in court by those involved is hardly an "historical precedent" within the contemplation and meaning of subsection 4(d) of article VII of the present Constitution.

The Illinois law is clear that repetitions of unconstitutional acts cannot make such acts valid.¹⁰⁷ It is doubtful, therefore, that the Cook County Assessor's *de facto* system of classification was an historical precedent within the meaning of subsection 4(d) of article VII.

It would appear from the foregoing that the Cook County Board, having failed to exercise the options granted to it under subsection 4(b) of the Revenue Article, for the assessment years 1971, 1972, and 1973,¹⁰⁸ would be governed by the general provisions of subsection 4(d) prohibiting the classification of real property for purposes of taxation. It would further appear that the changes in the classification system made by the County Assessor in 1972 were made without legal authority and are therefore void. In any event, the Cook County Board should certainly enact an ordinance adopting a valid classification system, and defining what, if any, powers the Cook County Assessor shall have with respect to the classification of real property for purposes of taxation.

McDonough v. Schmuhl, 359 Ill. 446, 449, 194 N.E. 731, 733 (1935); *People ex rel. McDonough v. Grand Trunk Western R.R.*, 357 Ill. 493, 192 N.E. 645 (1934).

¹⁰⁶ Chicago Daily News, Dec. 19, 1972, at 2, col. 1.

¹⁰⁷ See *Burke v. Snively*, 208 Ill. 328, 356, 70 N.E. 327, 335 (1904).

¹⁰⁸ As previously noted, see p. 102 *supra*, it would appear that an ordinance enacting or modifying a system for the classification of real property for purposes of taxation must be adopted prior to January 1 of the year for which it is to take effect. On this basis, it is now too late for the Cook County Board to adopt an ordinance providing for the classification of real property in Cook County for the years 1972 and 1973.

Although it is probable that the words "or to continue to classify" were intended to permit the Cook County Board to adopt, at some date in 1971 after the effective date of the Constitution, July 1, 1971, an ordinance electing to continue to classify real property pursuant to the *de facto* system of classification theretofore in effect, see p. 103 *supra*, such question is now moot, since the Cook County Board at no time during the year 1971 adopted such an ordinance, or indeed any ordinance relating to the taxation of real property for the purposes of taxation.

CONCLUSION

The Revenue Article of the 1970 Illinois Constitution has made substantial changes in the law governing the taxation of real property in Cook County. It has greatly increased the prospects of successful litigation by taxpayers aggrieved by the valuations placed upon their properties for tax purposes. It has vested very substantial powers regarding the taxation of real property in the County Board, and, conversely, has greatly diminished the discretionary powers of the County Assessor and the Board of Appeals.

Regrettably the County Board, County Assessor, and State's Attorney have failed both to recognize the significance of these changes and to take the action necessitated by them. As a result they have increased needlessly the prospects of litigation successfully challenging the validity of assessments made during the past two years and the current year.

Immediate action by the County Board is needed to regularize the classification of real property for purposes of taxation and to fix the respective powers of the Board and the County Assessor. Legislation should also be adopted by the General Assembly to govern the newly available right of taxpayers to direct judicial review of decisions of the County Assessor and Board of Appeals.

The John Marshall Journal Of Practice and Procedure

Volume 6

Fall Term, 1972

Number 1

Member of Executive Committee, National Conference of Law Reviews

EDITORIAL BOARD

IRA P. GOULD
Editor-in-Chief

Executive Editors

CANELLA HENRICHS
EDWARD LEGNER

MARILYN MARTON
GERRY SRAMEK

Associate Editors

ALAN FULKERSON
Managing Editor

BARBARA QUINN
Notes

JOEL ARNOLD
Special Projects

LEIGH WALTERS
Lead Articles

LEE MONTGOMERY
Editorial Assistant

STAFF

VINCENT CIPOLLA
SCOTT COURTIN
ROGER FRENCH
DOUGLAS HONIG
JOEL JACOBSON
EDWARD KULECK
GEORGE KLUMPNER
JOHN MARTOCCIO
KIM MULLER
ROGER NELSON

ALAN NEWDELMAN
ROBERT QUINN
STEVEN SALK
KATHIE SCHIELE
FRED SCHNEIDER
LEW SCHNEIDER
LEE SHELLY
ROBERT THOMPSON
BILL WHITE

CANDIDATES

CHARLES BARGIEL
THOMAS BROWNE
TED CRAIG
ERIC DOROSHOW
DAVID GEARIN
MARGARET GRABOWSKI
MICHAEL KANE
BRUCE KONZELMAN
NORMAN KURTZ
MICHAEL MAZQUARIAN
JOSEPH MCHATTON

ROGER RAY
MARY ROBBINS
MARY SCHLOTT
ROGER SCHNEIDER
GLENN SECHEN
DEBORAH SPADA
PHILIP TAUBMAN
EDWARD VIENUZUS
LOUIS XIQUES
RAYMOND ZEASON

FACULTY ADVISOR

RICHARD M. CALKINS