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TAXATION OF REAL PROPERTY IN COOK COUNTY — THE “RAILROAD CASES” AND THE FUTURE OF DE FACTO CLASSIFICATION

By RICHARD L. WATTLING *

Classification of real property for purposes of taxation is a most important aspect of public finance in Cook County.¹ Under this system of taxation, real estate is grouped into approximately three dozen classes, which are then taxed, in effect, at varying rates.² Such classification substantially affects the incidence of local taxation. As a practical matter, certain types of residential real estate, notably single family dwellings, have been greatly favored at the expense of commercial and industrial property.³

Classification of real property for purposes of taxation lacks both constitutional and statutory sanction; indeed, the Cook County system may be said to exist despite both the constitution and the statutes of the State of Illinois.⁴ It is the product, in-

¹ For the year 1965, Cook County property tax assessments (equalized) aggregated \$17,747,147,731, distributed as follows: locally assessed real estate, \$14,274,583,469; locally assessed personalty, \$3,018,607,803; railroad property, \$124,222,829; and state assessed capital stock, \$269,733,830. ILL. DEPT. OF REVENUE, ANNUAL REPORT — 1965, table 2 at 22 (1966). For the year 1965, property tax extensions within Cook County aggregated \$915,149,180. THE CIVIC FEDERATION, 34TH ANNUAL SURVEY OF DEBTS-TAXES-ASSESSMENTS 19 (1967).

² See ILL. DEPT. OF REVENUE, PROPERTY TAX STATISTICS — 1965, 132, 134 (1967); see text at notes 127 to 131 *infra*.

³ Fisher, *An Economist's Appraisal of the Illinois Tax System*, 1961 U. ILL. L. F. 543, 580.

There is a widespread belief in Illinois that business property in Chicago is assessed high in relation to individually owned properties while in downstate areas the reverse is often true. Support for the accuracy of this belief is provided by a recent study made for the Federal Reserve Bank of Boston. In that study estimates were made of the 1958 taxes which would be paid by two hypothetical firms locating new plants in various urban and suburban locations in several states. Various methods were used to estimate the level of assessment in each location. The resulting estimates indicate that local property taxes in Chicago would be higher for both hypothetical firms than in any of the eight urban and six suburban locations studied. Local property taxes in Kankakee, on the other hand, would be among the lowest of the locations studied. Corporation A would pay over three times as much in Chicago as in Kankakee and Corporation B, a smaller 'growth' corporation owning little real estate, would pay over five times as much in Chicago as in Kankakee. These results are caused partly by the higher rates in Chicago but also reflect significant differences in assessment levels.

⁴ ILL. CONST. art. IX, §1; ILL. REV. STAT. ch. 120, §501 (1965); Chicago Daily News, May 20, 1965 at 1, col. 8:

The Revenue Article now requires real estate to be assessed at a uniform rate.

Cook County, however, has for many years ignored the Constitution and has assessed real estate at various rates for tax purposes.

Under this system, a manufacturing plant or railroad has been assessed at a higher rate than a home.

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stead, of consistent and deliberate administrative practice — administrative practice at all times contrary to the letter of the law — which has been followed by successive county assessors and members of the board of appeals. For this reason, the Cook County system has been termed *de facto* classification, to distinguish it plainly from *de jure* classification, *i.e.*, classification authorized by law.⁵ *De facto* classification of real property in Cook County has existed for several decades.⁶ Until recently, it was believed, generally, that such classification was immune to effective legal attack.⁷ Now, as a result of a series of Illinois Supreme Court decisions, most notably, the so-called "Railroad Cases," the possibility exists that classification of real property for purposes of taxation may be challenged successfully.⁸ The purpose of this article is to explore this possibility, and to consider some of the practical consequences that would ensue were such possibility to be realized.

CLASSIFICATION

Classification connotes a division of a given category into a number of smaller groups or classes having certain common characteristics. It must be remembered, however, that a given category often may be divided in several different ways, and for widely varying purposes. In Cook County, for example, property might be subjected, under the operation of the *ad valorem* property tax, to three different types of classification: classification for purposes of assessment; classification for purposes of administration and collection; and classification for purposes of

⁵See Comment, *The Illinois Constitutional Requirement of Uniformity of Taxation*, 33 ILL. L. REV. 57, 68-76, 78-79 (1938).

⁶*Aldrich v. Harding*, 340 Ill. 354, 358, 172 N.E. 772, 774 (1930) (involving taxes for the year 1927; Comment, *The Illinois Constitutional Requirement of Uniformity of Taxation*, 33 ILL. REV. 57, 74 (1938): "Classification according to types of property is likewise common, variations in levels of assessment occurring between business properties, hotels and apartments, and homes; between improved and unimproved property."

⁷See Carey and Schulyer, *The Illinois Taxpayer's "Day in Court,"* 31 ILL. L. REV. 993, 1007 (1937); Comment, *Taxation of Intangibles Under the Illinois General Property Tax*, 35 ILL. L. REV. 716, 724-27 (1941).

⁸See note 60 *infra*; Chicago Sun-Times, May 21, 1965, at 28, col. 1:

The Illinois Supreme Court decided for the first time Thursday that Cook County had overassessed a railroad for taxation.

The court's ruling in favor of the Burlington Route raised the possibility that the county might lose as much as \$34,000,000 in tax money that other railroads have paid under protest.

In the railroad case, Burlington contended that its property was being assessed at 100 per cent of its value while the average assessment on other property in the county is 50 per cent.

Democrats have expressed fears that other businesses might take the railroads' example and challenge Cook County's *de facto* classification system, thereby threatening wholesale loss of revenues to the county.

Under the Cook County system, businesses are assessed at generally higher percentages of their value than homes.

taxation. For an understanding of the questions posed by this article, it is necessary that one of these three types of classification, classification of real property for purposes of taxation, be defined with particular care.⁹

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 a 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 estate itself. Factors such as the form of ownership of the property, 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 the 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.¹⁰

The latter approach is the one followed in Cook County. The rate of tax varies, of course, by taxing district. However, within each taxing district in the County, the same rate is applied to the assessed valuation of all property subject to tax. Classification is accomplished by varying, from class to class, the percentage of actual value used in the assessment of the property tax. Thus, a single family dwelling might be assessed at 35 per cent, a factory at 70 per cent, and a downtown office building at 100 per cent of their respective actual values. Accordingly, in this article,

⁹ For an example of classification for purposes of assessment, as distinguished from classification for purposes of taxation, see *People ex rel. Toman v. Pickard*, 377 Ill. 610, 614, 37 N.E.2d 330, 332 (1941):

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.

¹⁰ Classification of property for purposes of taxation also may be incident to a change in the nature of the tax imposed. For example, where personal property has been classified, the *ad valorem* property tax might be replaced by an excise or an income tax. Thus, it has been suggested that a recording tax be substituted for the annual personal property tax upon real estate mortgages, and that an income or yield tax similarly replace the personal property tax on stocks and bonds. See Cushman, *The Proposed Revision of Article IX of the Illinois Constitution*, 1952 U. ILL. L. F. 226, 242.

classification of real property for purposes of taxation specifically means: a classification system under which the percentages of actual value used in the assessment of real property vary appreciably, and deliberately, from class to class.

The Constitutional and Statutory Problems

The basic constitutional provisions governing the taxation of property in Illinois are contained in section I of "The Revenue Article."¹¹

The general assembly shall provide such revenue as may be needed 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; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.¹²

Section 1 consists of two clauses. The first clause, ending with the words, "such value to be ascertained by some person or persons . . . and not otherwise," governs the taxation of property, both real and personal. The second clause, comprising the remainder of the section, generally has been construed to relate to exercise, or nonproperty taxes.¹³ However, a number of decisions have interpreted the second clause as also being applicable, under certain circumstances, to portions of the property tax.¹⁴ The first clause makes no reference to "class" or "classification"; the second clause, however, contains the phrase, "uniform as to the class upon which it operates."

¹¹ ILL. CONST. art. IX, §1.

¹² *Id.* Section 1 is admittedly prolix. However, the supreme court has supplied the following summary of its provisions:

Closely analyzed, it can be seen there are three general objects which this section accomplishes: (1) The General Assembly shall provide for revenue by levying a tax by valuation, so that every taxpayer shall pay in proportion to the value of his property; (2) the value upon which the tax is levied shall be ascertained by some person or persons elected or appointed as the General Assembly shall direct, not otherwise; and (3) in its discretion the General Assembly shall have the power to tax a number of occupations or privileges, and persons or corporations owning or using franchises or privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.

People ex rel. Prindable v. Union Electric Power Co., 392 Ill. 271, 274, 64 N.E.2d 534, 535-36 (1946).

¹³ *Bachrach v. Nelson*, 349 Ill. 579, 588-91, 182 N.E. 909, 912-13 (1932); *Lucas, Non Property Taxes under the Illinois Constitution*, 25 U. CHI. L. REV. 63, 66-67 (1957).

¹⁴ *People ex rel. Prindable v. Union Electric Power Co.*, 392 Ill. 271, 64 N.E.2d 534 (1946); *Porter v. Rockford, Rock Island & St. Louis R.R.*, 76 Ill. 561 (1875); see text at notes 28 to 36 *infra*.

The first clause of section 1 authorizes only a general, unclassified property tax. Such a tax imposes an equal levy, in proportion to value, upon all forms and types of property — whether real estate, tangible personal property (*e.g.*, automobiles, inventories, machinery and equipment), or intangible personal property (*e.g.*, bank deposits, stocks, bonds and accounts receivable).¹⁵ Similarly, the Revenue Act provides that all property, both real estate and personalty, “shall be valued at its fair cash value.”¹⁶

These provisions of the Revenue Article, and of the Revenue Act, preclude any classification of real property for purposes of taxation. As indicated above, such classification entails the deliberate assessment of various classes of real estate at different percentages of actual value. Accordingly, it conflicts with both the Revenue Article’s command that all property be taxed uniformly in proportion to value, and the Revenue Act’s requirement that all real property be valued, for tax purposes, at its fair cash value.

This is not to say that these provisions forbid *any* classification of real property in relation to the Illinois property tax. As the supreme court has noted:

While the constitution provides for uniformity, the rule does not require that the assessments must always be made by the same officer or class or officers or that the same methods of ascertaining values must be followed for all classes of property. Thus, the General Assembly may provide for the assessment of capital stock of some corporations by the State Board of Equalization or the Revenue Department and the capital stock of other corporations by local assessors.¹⁷

Consequently, there can be classification for certain administrative purposes, such as assessment. Examples of such classification of real property may be found in the early case of *People ex rel. Lindsey v. Palmer*,¹⁸ and in the more recent decisions of *People ex rel. Lunn v. Chicago Title & Trust Company*¹⁹ and *Budberg v. County of Sangamon*.²⁰ In the *Palmer* decision, the court said:

For the purpose of taxation the legislature has classified property, and provided that in the equalization by the county board, ‘it may consider lands, town or city lots, personal property and railroad property, (except ‘railroad track’ and ‘rolling stock,’) separately,

¹⁵ 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.R.*, 357 Ill. 493, 497-99, 192 N.E. 645, 647 (1934).

¹⁶ ILL. REV. STAT. ch. 120, §§501, 502 (1965).

¹⁷ *People ex rel. Ruchty v. Saad*, 411 Ill. 390, 397, 104 N.E.2d 273, 277 (1952).

¹⁸ 113 Ill. 346, 348, 1 N.E. 830, 831 (1885).

¹⁹ 409 Ill. 505, 515, 100 N.E.2d 578, 584-85 (1951).

²⁰ 4 Ill.2d 518, 123 N.E.2d 479 (1955).

and determine a separate rate per cent of addition or reduction for each of said classes of property, as may be necessary to a just equalization of the assessed value of said classes of property within the respective towns, and of the same between the several towns or districts in the county.’²¹

And in the *Lunn* case, it was held:

Next, the individual objectors in Warren township attack the order increasing their assessments upon the ground the increases were arbitrary and unreasonable, in that the valuations of lands were raised 25 per cent, and lots 100 per cent. According to these objectors, unsubdivided tracts and lots, all being land, must be treated uniformly. The short answer to this is that it was necessary to increase the values of tracts and lots by different percentages in order to make their assessed valuations uniform. Furthermore, section 20 of the Revenue Act . . . , providing for the valuation of real property, refers to tracts and lots, and subparagraph 5 of section 108 . . . in authorizing boards of review to increase an entire assessment of real property or an included class, does not impose any limitation upon the classification of real property. The classification of real estate into lands and lots being impliedly authorized by section 20 and not prohibited by section 108, and being reasonably necessary to equalize the assessment in Warren township, it cannot be said that the action of the county board in so classifying real estate was arbitrary or capricious.²²

Further, the Revenue Act itself authorizes boards of review to equalize tax assessments by classes, as well as by area.²³

It should be noted that in the above instances, the classification of real property for purposes of assessment was intended to aid in equalizing real property assessments, so that the property tax, at least as to real estate, should approximate the objective set forth in section 1 of the Revenue Article, that “every person shall pay a tax in proportion to the value of his, her or its property.” This is in marked contrast, of course, to classification of real property for purposes of taxation, the basic objective of which is to create disparities between the respective percentages of actual value at which various classes of real estate are assessed.

Classification of property for administrative and collection purposes has also been considered constitutionally permissible. This accounts for the breakdown of property into two major categories: real estate and personalty. Under the Revenue Act, there would appear clearly to be but a single property tax. All property, both real and personal, is to be taxed, unless specifically exempted; all property, whether real or personal, is to be valued for tax purposes at its fair cash value; and the tax rate, as determined for each taxing district, is to be the same for both real and personal property.²⁴ Yet, the Revenue Act contains so many separate and distinct provisions for real and personal property,

²¹ 113 Ill. 346, 348, 1 N.E. 830, 831 (1885).

²² 409 Ill. 505, 515, 100 N.E.2d 578, 584-85 (1951).

²³ ILL. REV. STAT. ch. 120, §589(5) (1965).

²⁴ *Id.* §§499, 501, 502, 643.

respectively (see, *e.g.*, the provisions regarding assessments, bills, liens and suits for collection), that the public generally, and the legal profession as well, have come to think not of one property tax, but of two separate and distinct taxes — a real estate tax and a personal property tax.²⁵

Finally, there is the classification specifically authorized by the phrase, "uniform as to the class upon which it operates," contained in the second clause of section 1 of the Revenue Article. This phrase has been cited as the constitutional basis for the general assembly's power to classify corporations so that some are assessed, for capital stock purposes, by the Department of Revenue, and others are so assessed by local authorities.²⁶ However, the phrase has also been construed, in a series of decisions by the supreme court, to permit other classifications, the effect of which would not be limited to capital stock assessments. The first decision in this latter series of cases is *Illinois Central Railroad Company v. County of McLean*,²⁷ decided in 1855. The latest would appear to be *People ex rel. Prindable v. Union Electric Power Company*, a 1946 decision.²⁸

The provisions of section 1 of the present Revenue Article are almost identical to those of section 2, article IX of the Illinois Constitution of 1848. In 1851, the Illinois Central Railroad Company was chartered by a special act of the General Assembly. This charter exempted it from all property taxes, local as well as state, in return for a payment to the state of a special tax of seven per cent of its gross receipts. In the *McLean County* case, the supreme court upheld these charter provisions as against an attempt by the county to tax the property of the Illinois Central. The court's opinion analyzed, in detail, the relationship between what are now the first and second clauses of section 1 of the Revenue Article. Said the court:

The whole design, as we apprehend the constitution, was to enable the legislature to make the burden proportionate, by applying a different rule to these occupations. For peddlers, auctioneers . . . may, and most usually do, carry on large sales and exchanges of property, and at no one time have in possession anything like a fair proportionate amount of property to their annual sales and profits, which could be assessed or taxed. So with toll bridges, ferries . . . showmen and jugglers Some corporations invest all the capital used by them in taxable subjects, lands, houses, machinery, materials and manufactures from them; others have a portion, while another class, like merchants and others, is in floating, exchangeable values, in goods, produce, and bills and notes; and others with little taxable property, and large but profitable credits. Power, then, to make a flexible rule became indispensable

²⁵ *Id.* §§511, 529, 671, 675, 697, 699.

²⁶ *The Hub v. Hanberg*, 211 Ill. 43, 71 N.E. 826 (1904); *Sterling Gas Co. v. Higby*, 134 Ill. 557, 25 N.E. 660 (1890).

²⁷ 17 Ill. 291 (Peck 1855).

²⁸ 392 Ill. 271, 64 N.E.2d 534 (1946).

to reach and remedy an inequality inseparable from the nature of these circumstances and irremediable by a uniform and proportionate rule, assessed on actual appraisements of visible property. Therefore, this general power to tax these, which, when exercised generally upon all, or specially upon one corporation, may well commute, estimate, include and compound within the rule of assessment, whatever of real or personal property the individual or corporation may use in the calling, or with the franchise.²⁹

In brief, the court held that a tax imposed pursuant to the second clause of present section 1 might be substituted, in whole or in part, for the *ad valorem* property tax otherwise payable pursuant to the first clause.

Commencing with *Porter v. Rockford, Rock Island & St. Louis Railroad Company*,³⁰ the court ruled that its interpretation in the *McLean County* case, of the revenue provisions of the 1848 constitution, also applied to section 1 of the present Revenue Article.³¹

The latest, and most complete statement of the court's interpretation of section 1, in light of the *McLean County* line of authorities, is contained in the following two paragraphs from its opinion in the *Union Electric Power Company* case:

The general principle of uniformity applies to both clauses of section 1 but does not of necessity apply to them in combination. In other words, as to all property assessed and valued under the first clause the ratio must be uniform, whether actual value or debased value is taken. The same principle of uniformity applies to valuations fixed under the last clause of section 1, but the difference between the two is that the General Assembly may as to certain subjects create, by general law, classes of taxpayers, and in such cases the uniformity required must conform to all coming within that class, but need not be uniform in method or amount of assessment with the other classes, or with the property coming under the first clause of section 1 of article IX.³²

The potential of the *McLean County* line of cases, as exceptions to the uniformity requirement of section 1 of the Revenue Article is indicated by the factual circumstances of the *Union Electric Power Company* decision. In that case, the taxpayer was taxed by virtue of an assessment made by the Department of Revenue on the basis of 54 per cent of the fair cash value of its capital stock, even though its locally assessed property (real estate and tangible personal property), was assessed at but 35 per cent. This was done even though corporations assessed locally for capital stock purposes in the same county wherein the taxpayer maintained its principal office, were likewise assessed at but 34 per cent of the cash value of their capital stock. Also of interest was the court's interpretation of its earlier decision in *Mobile &*

²⁹ 17 Ill. 291, 293-94 (Peck 1855).

³⁰ 76 Ill. 561 (1875).

³¹ *Coal Run Coal Co. v. Finney*, 124 Ill. 666, 17 N.E. 11 (1888); *Sterling Gas Co. v. Higby*, 134 Ill. 557, 25 N.E. 660 (1890); *The Hub v. Hanberg*, 211 Ill. 43, 71 N.E. 826 (1904).

³² 392 Ill. 271, 286-88, 64 N.E.2d 534, 540-41 (1946).

Ohio Railroad Company v. State Tax Commission.³³ The two decisions, when read together, indicate that the Department of Revenue was free to assess railroad property at any given percentage of its actual value, without regard to the respective percentages of actual value used to assess other real property in the counties in which a railroad's property might be located, and in which it would pay a property tax.

However, the *McLean County* line of cases, in general, and the *Union Electric Power Company* case, in particular, afford no support for the de facto classification system presently existing as to Cook County real property.

The classification authorized by the second clause of section 1, on which clause the *McLean County* decisions depend, is classification by "classes of taxpayers,"³⁴ such as classification based upon the occupation or trade of the user of the property, or whether such user is or is not a corporation and not classification by type of property, as is true of the Cook County system. Moreover, the power to classify, granted by that clause, is vested in the general assembly, not in the local assessing authorities; and the general assembly has made most sparing use of it. Specifically, the general assembly has not sought to use its power under this clause to differentiate among categories of property, as is indicated by the provisions in the Revenue Act which require that all property, both real and personal, be valued, for tax purposes, at fair cash value.

In *People ex rel. Hillison v. Chicago, Burlington & Quincy Railroad Company*,³⁵ the first of the so-called "Railroad Cases," the county sought to invoke the *Union Electric Power Company* decision to justify the discrimination of which the railroad complained. The court rejected the county's argument quite summarily:

Before dealing with the main substantive question, it is necessary to dispose of one further argument of plaintiff. Plaintiff, relying on certain language in *People ex rel. Prindable v. Union Electric Power Co.* . . . argues that the constitution does not require railroad property to be assessed and taxed uniformly with other property, but that railroad property is a separate class, and that all that the constitution requires is uniformity within the class. Whether the legislature might constitutionally have provided for the assessment of railroad property at its full value while other property is assessed at only 55% of full value is not before us. The legislature has not so provided. The statute requires all property to be assessed at its full value, and the trial court found that the Department has failed to comply with the statute. It remains to be considered whether the findings of the trial court are supported by the evidence.³⁶

³³ 374 Ill. 75, 28 N.E.2d 100 (1940).

³⁴ 392 Ill. 271, 286, 64 N.E.2d 534, 540 (1946).

³⁵ 22 Ill.2d 88, 174 N.E.2d 175 (1961).

³⁶ *Id.* at 96, 174 N.E.2d at 178.

Briefly, classification of property for purposes of taxation, as presently practiced in Cook County, clearly violates both the first clause of section 1 of the Revenue Article, and the Revenue Act, and finds no support in the special and restricted classification power granted to the general assembly by the second clause of section 1 of the Revenue Article.

Although some classifications of real property have been authorized by the Revenue Act, or inferentially recognized by the courts as permissible under the first clause of section 1, all such classifications have been consistent with the basic uniformity requirement of that section. In accord with that basic requirement have been the many pronouncements of the Illinois Supreme Court construing section 1 of the Revenue Article; and except for very rare, and distinguishable dicta, the court has never deviated from the view that the first clause of section 1 requires all property to be taxed uniformly.³⁷

Judicial Review

Probably the single most distinguishing feature of the classification of real property for purposes of taxation, is that certain real property is taxed more heavily and other real property is taxed more lightly, than if there were no such classification. That is to say, such classification has both its beneficiaries and its victims, with the benefits to the former being paid for by the latter, by way of higher real estate taxes.

Since this aspect of the Cook County real property classification system is well known, especially to those adversely affected by it, and because of the obvious conflict existing between such classification and the explicit requirements of section 1 of the Revenue Article, the question naturally arises: how did such

³⁷ The dicta are in *People ex rel. Toman v. Olympia Fields Country Club*, 374 Ill. 101, 103, 28 N.E.2d 109, 110 (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 Income Taxation in Illinois*, 1961 U. ILL. L. F. 586, 611, 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.
Comment, *Taxation of Intangibles in Illinois*, 35 ILL. L. REV. 716, 726 n. 57 (1941), referring to *Olympia Fields*:

The court may have confused the permissive classification which the Constitution authorizes (when certain specified classes of business 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. 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.

classification come to be, and how has it managed to survive so long?

The answer is to be found in the restrictive nature of the Revenue Article's provisions regarding judicial review of the valuations — that is to say, of the assessments made by the officers administering the property tax. The first clause of section 1 of the Revenue Article provides:

The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, . . . 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. . . .³⁸

The courts have held, consistently, that under this provision of the Revenue Article, they have no power, in the absence of fraud, to review or redetermine the value of property as fixed for purposes of taxation by the assessing officials. A leading, and early case on this point is *Republic Life Insurance Company v. Pollak*³⁹ in which the court said:

Nor is there any power, expressed or implied, by which the courts can fix a valuation, or review the action of the assessors. . . . When those officers have acted it is final, and the tax payer must submit to the action of the officer who is clothed with the sole power to make the estimate of the value, unless he show it was fraudulently made. . . .⁴⁰

A recent and succinct restatement of this proposition is contained in *People ex rel. Nordlund v. S.B.A. Company*:⁴¹

We have consistently held that the taxation of property is a legislative rather than a judicial function, and under section 1 of article IX of the Illinois constitution, the courts, in the absence of fraud, have no power to review or determine the value of property fixed for purposes of taxation by the appropriate elected or appointed administrative officers.⁴²

One consequence of section 1, so construed, is the absence from the Illinois property tax system of any direct judicial review of the valuations placed upon property by the local assessors. An administrative appeal to the board of review in counties other than Cook and to the board of appeals in Cook County, is provided,⁴³ but further direct appeal to the courts from the valuations of the local assessor is not allowed, and all attempts to provide such further direct judicial review have failed.⁴⁴

Notwithstanding this absence of direct judicial review of lo-

³⁸ ILL. CONST. art. IX, §1.

³⁹ 75 Ill. 292 (Freeman 1875).

⁴⁰ *Id.* at 295.

⁴¹ 34 Ill.2d 373, 215 N.E.2d 233 (1966).

⁴² *Id.* at 376, 215 N.E.2d at 235.

⁴³ ILL. REV. STAT. ch. 120, §§588-589, 598, 599 (1965); there is, however, direct judicial review of original assessment made by the Department of Revenue. *Id.* §§619, 620.

⁴⁴ *Keokuk & Hamilton Bridge Co. v. People*, 185 Ill. 276, 279, 56 N.E. 1049, 1050 (1900); *Sanitary District of Chicago v. Board of Review of Will County*, 258 Ill. 316, 318, 101 N.E. 555 (1913).

cal assessments, a large number of cases have arisen in which the validity of the real property tax has been contested, often successfully, on the ground that the valuation placed upon the property by the local assessing officials was excessive.⁴⁵ Such litigation has taken the form either of a suit to enjoin the collection of the tax, or of objections to the county collector's application for judgment and an order of sale.⁴⁶ As a practical matter, these cases have constituted indirect judicial review of real property assessments.

It is difficult to evaluate the significance of this distinction between direct judicial review of local real estate assessments, which is prohibited, and indirect judicial review, which is allowed. One practical consequence probably has been the characterization of the remedy sought by the taxpayer as extraordinary, thereby emphasizing the burden of proof upon him, and the necessity that all conditions precedent to bringing suit, such as the exhaustion of administrative remedies, be complied with fully.

The grounds upon which the courts will grant such "indirect" judicial review of real estate assessments, and relieve thereby against excessive valuations, are defined by a considerable body of decisions of the Illinois Supreme Court. Common, and basic, to all these decisions is the requirement that the offending assessment be shown to be fraudulent.⁴⁷ An examination of the cases shows, however, that a large proportion of the situations embraced within the nominal term, "fraudulent," did not involve moral turpitude on the part of the assessing authorities, but on the other hand did involve more than a mere difference of opinion between the assessors and the courts, as to the proper valuation, for purposes of taxation, of specific real property. In brief, indirect judicial review has come to be based, not solely on proof of "actual" fraud, but also on a showing of constructive fraud.⁴⁸

Of course, the clearest case for indirect judicial review of real estate assessments has always been that of actual fraud — for example, that the assessor's motive in making the assessment in question had been dishonest or corrupt. Thus, it might be shown that the assessor had deliberately made an excessive assessment after failing in efforts to extort money from the taxpayer under threat of making just such an assessment.⁴⁹ How-

⁴⁵ Cushman, *The Judicial Review of Valuation in Illinois Property Tax Cases*, 35 ILL. REV. 689 (1941).

⁴⁶ Young, *Taxpayer's Remedies*, 1952 U. ILL. L. F. 248, 274-78.

⁴⁷ Cushman, *supra* note 45 at 689-90.

⁴⁸ 3 POMEROY, EQUITY JURISPRUDENCE §922 (5th ed.) (1941).

⁴⁹ *New Haven Clock Co. v. Kochersperger*, 175 Ill. 383, 388, 390-91, 51 N.E. 629, 630-31 (1898).

ever, cases in which actual fraud can be alleged and proved are rare; and if the power of the courts to review and reduce excessive assessments were limited to such instances, judicial review, whether direct or indirect, would be practically nonexistent.

On the other hand, since the need for some form of judicial relief from flagrant overassessments has usually been only too manifest, the courts early began to substitute constructive fraud for actual fraud as the principal basis for indirect judicial review of real property assessments. By a gradual process of judicial decision, the courts have come to grant judicial relief against a wide variety of arbitrary, although in fact nonfraudulent, valuations of real property by local assessors.⁵⁰

At present, it would appear that the grounds which the courts have accepted for indirect judicial review from excessive real property assessments may be classified under the following six categories, the latter five of which have been held to imply constructive fraud:

- (a) Actual fraud;
- (b) Assessment so excessive it could not have been honestly made;
- (c) Assessment made by mere will without the exercise of judgment;
- (d) Assessment arbitrarily made in disregard of recognized elements of value;
- (e) Assessment made in violation of rules; and
- (f) Intentional and systematic discrimination.⁵¹

Translating the above general categories into specific examples is difficult. It was generally believed, until the "Railroad Cases,"⁵² that judicial relief, solely on the ground of flagrantly excessive assessment, was unlikely unless the assessment in question was at a percentage of actual value three to four times as great as the prevailing, or average level of assessment.⁵³ In Cook County, where the prevailing level of assessment is about 50 per cent of the actual value of the property, this would mean that a specific parcel would have to be assessed at from 150 to 200 per cent of its actual value before the courts would intervene on the ground of constructive fraud.

The other recognized categories of constructive fraud are even more difficult to translate into concrete terms. Most of them have turned on specific factual circumstances, and the showing, or more usually the lack thereof, made by the authorities in defense of particular assessments. Moreover, in evaluating the prospects of obtaining judicial relief, a taxpayer aggrieved by

⁵⁰ Cushman, *supra* note 45 at 691; *e.g.*, *Pacific Hotel Co. v. Lieb*, 83 Ill. 602, 609-10 (1876).

⁵¹ Young, *supra* note 46 at 269; Cushman, *supra* note 45 at 690-91.

⁵² See note 60 *infra*.

⁵³ See Gale, *Assessment and Collection of Taxes*, 1952 U. ILL. L. F. 192, 196; Comment, *The Illinois Constitutional Requirement of Uniformity in Taxation*, 33 ILL. L. REV. 57, 67, n. 60 (1938).

the operation of the Cook County classification system must also consider the following general propositions:

1. The well-established rule is that the courts are not concerned with a "mere difference of opinion as to value," between the taxpayer and the assessor. The supreme court recently affirmed this rule when it stated:

When valuation has been fraudulently made it is subject to judicial review, but more is required for this purpose than merely showing an overvaluation. . . . Before the conduct of the taxing authorities will be considered constructive fraud, the evidence must clearly establish that the assessment was made in ignorance of the value of the property, or on a judgment not based upon readily ascertainable facts, or on a designedly excessive basis.

. . . If property has been assessed higher than it should have been through a mere error of judgment on the part of the officers making the valuation, the courts are powerless to rectify the error. They can relieve only against fraud.⁵⁴

In brief, judicial review is not available to resolve contests between groups of expert witnesses, *i.e.* the appraisers retained by the taxpayer, on the one hand, as against those in the employ of the county assessor, on the other. If a case narrows down to such a contest, the taxpayer will almost surely lose.

2. The rule is also well established that the nonassessment or underassessment of other property is no ground for relief.

The contention that the assessments upon the lots and parcels of real estate of the appellants are void because there was discrimination in favor of personal property is not tenable. It has been the uniform rule in this State that neither the omission to assess nor the under-valuation of one kind or class of property will invalidate the assessments upon other property in the same jurisdiction.⁵⁵

The most notable application of this proposition was in the tax-strike cases of the early 1930's, where the principal issue was the general omission of personal property from the tax rolls.⁵⁶

This rule means, as a practical matter, for example, in a suit challenging the assessment of an office building at 90 per cent of its fair cash value, that it is irrelevant that there are in the same community numerous bungalows and two-flats which are assessed at but 20 to 25 per cent of their fair cash values.

On the other hand, although the underassessment of other specific property is no ground for judicial relief, a taxpayer is entitled to relief if he can prove that his real estate has been assessed at a greater proportion of its fair cash value than the proportion at which real property *generally* has been assessed.⁵⁷

⁵⁴ *People ex rel. Frantz v. M.D.B.K.W., Inc.*, 36 Ill.2d 209, 211, 221 N.E. 2d 650, 652 (1966).

⁵⁵ *Bistor v. McDonough*, 348 Ill. 624, 634, 181 N.E. 417, 421 (1932).

⁵⁶ See *Kent, Tax Litigation in Illinois*, 1 U. CHI. L. REV. 698, 699-706 (1934).

⁵⁷ *E.g.*, *People ex rel. McDonough v. Grand Trunk Western R.R.*, 357 Ill. 493, 497-99, 192 N.E. 645, 647 (1934); *People's Gas Light & Coke Co. v. Stuckart*, 286 Ill. 164, 176, 121 N.E. 629, 633 (1919); *Chicago & Alton R.R. v. Livingston County*, 68 Ill. 458, 460 (1873).

3. The burden of proof is on the objecting taxpayer. This is no slight matter, particularly in a jurisdiction as large and complex as Cook County. The very quantum of evidence which can be required to establish a given factual proposition, such as the prevailing level of assessment for real property generally, or for a particular type of real property can be overwhelming.⁵⁸ Moreover, in litigation involving as vital a matter as the classification system, it must be assumed that those defending the assessment will concede or stipulate to very little. Thus all aspects of the taxpayer's case probably will have to be proved, and in detail.

These various rules, delimiting judicial review of real estate assessments, have operated to establish a protected area of administrative discretion. Operating within this area, successive county assessors of Cook County have erected and maintained the de facto classification system.

As pointed out in the preceding section of this article, the Cook County classification system designedly assesses different types, or classes, of real property at varying percentages of actual value. The very existence of such differences in assessment rates, as between classes of real property, presupposes in turn that certain classes will be assessed at percentages of actual value greater than the average percentage at which real property, taken in the aggregate, is assessed. That is to say, the classification of property for purposes of taxation entails, necessarily, that there be one or more classes of real property which are assessed at percentages of actual value greater than the average percentage, applicable to all real property. Basic, therefore, to such classification is a power in the county assessor to cause certain types or classes of real property to be assessed at a greater percentage of actual value than that applicable to real estate generally. No such power is vested in the assessor by the Revenue Act, which, to the contrary, requires that each tract of real property, without exception, be valued at its fair cash value; nor could such power be granted to him by statute, consistent with the uniformity requirement of section 1 of the Revenue Article.⁵⁹ The power thus exists in a negative sense only, in the inability of persons aggrieved by its exercise to obtain judicial relief from the consequences of its use.

Thus, the Cook County system of de facto classification of real property depends, in the final analysis, upon the inability of those who are subjected, pursuant to that system, to above-average assessments, to obtain judicial relief from such over-

⁵⁸ See Parham, *Taxation of Property in Illinois*, 1961 U. ILL. L. F. 645, 648-49.

⁵⁹ Comment, *The Illinois Constitutional Requirement of Uniformity in Taxation*, 33 ILL. L. REV. 57, 70 (1938).

assessments. To the extent that the ability of such persons to obtain judicial relief is increased, the scope, or area of operation, of the de facto system is diminished; in the event that they should become entitled, generally, to judicial relief from all such overassessments, the system would collapse.

In this latter consideration lies the significance of the so-called "Railroad Cases," for these cases made significant changes, primarily in the adjective law regarding judicial review of real property assessments. These changes have increased substantially the rights of those aggrieved by overassessments, particularly those overassessments which are made in deliberate furtherance of an established policy — such as a definite classification system.

The "Railroad Cases" — First Phase

The term "Railroad Cases" has been applied to a group of seven decisions of the Illinois Supreme Court during the years 1961 to 1965.⁶⁰ To better understand this group of cases, three earlier decisions of the court should first be considered: *Chicago and North Western Railway Company v. Department of Revenue*,⁶¹ *Chicago, Burlington & Quincy Railroad Company v. Department of Revenue*⁶² and *People ex rel. Callahan v. Gulf, Mobile & Ohio Railroad Company*.⁶³ These three cases, which were the precursors of the Railroad Cases proper, differ from the latter in the vital consideration that in these earlier cases the taxpayers did not prevail. However, both affirmatively and negatively, these earlier decisions heralded the legal theory, the procedure and the actual showing which were to enable the railroad taxpayers to prevail in the later case.⁶⁴

Pursuant to special Revenue Act provisions railroad property is assessed by the Department of Revenue, an agency of the State government.⁶⁵ All other real estate is "locally as-

⁶⁰ *People ex rel. Hillison v. Chicago, Burlington & Quincy R.R.*, 22 Ill. 2d 88, 174 N.E.2d 175 (1961); *People ex rel. Kohorst v. Gulf, Mobile & Ohio R.R.*, 22 Ill.2d 104, 174 N.E.2d 182 (1961); *People ex rel. Dallas v. Chicago, Burlington & Quincy R.R.*, 26 Ill.2d 292, 186 N.E.2d 335 (1962); *People ex rel. Wenzel v. Chicago & North Western Ry.*, 28 Ill.2d 205, 190 N.E.2d 780 (1963); *People ex rel. Enrietta v. Gulf, Mobile & Ohio R. R.*, 29 Ill.2d 605, 195 N.E.2d 174 (1964); *People ex rel. Korzen v. Chicago, Burlington & Quincy R.R.*, 32 Ill.2d 554, 209 N.E.2d 649 (1965); *People ex rel. Musso v. Chicago, Burlington & Quincy R.R.*, 33 Ill.2d 88, 210 N.E.2d 196 (1965).

⁶¹ 6 Ill.2d 278, 128 N.E.2d 722, *cert. denied*, 351 U.S. 950 (1955).

⁶² 17 Ill.2d 376, 161 N.E.2d 838 (1959).

⁶³ 8 Ill.2d 66, 132 N.E.2d 544, *cert. denied*, 352 U.S. 832 (1956).

⁶⁴ There should also be noted, if only in passing, a belated Railroad Case, decided earlier this year. *People ex rel. Korzen v. Belt Ry.*, 37 Ill.2d 158, 226 N.E.2d 265 (1967). This decision, however, added little, if anything, to the principles established by the earlier opinions of the supreme court in the Railroad Cases.

⁶⁵ ILL. REV. STAT. ch. 120, §564 (1965). The "non-carrier" real estate of a railroad, however, is assessed by the local assessing officer in the taxing district where located.

sessed." The valuation of a railroad's property is first determined as a unit, and an allocation is then made between its Illinois property and its property not subject to taxation in this state. When the assessments of railroad property finally are determined by the Department, such assessments are distributed among local taxing districts in accordance with the provisions of the Act.⁶⁶

With regard to locally assessed real estate, the Revenue Act requires the Department of Revenue to lower or to raise the total assessed value of property in each county as returned by the county clerk so that such property will be assessed at its full, fair cash value.⁶⁷ When the Department completes its equalization, it is required to certify to the county clerk of each county a multiplier to bring the assessments of that county to 100 per cent of full value, which multiplier the county clerk is required to apply to the assessed valuation of property in his county, as revised by the board of review, or board of appeals, as the case may be.⁶⁸

These provisions of the Revenue Act, in their present form,

⁶⁶ *Id.* §567.

The equalized assessed value of the operating property and non-operating personalty of every Railroad Company subject to assessment, when determined as prescribed in Section 80 of this Act, shall be listed and taxed in the several taxing districts in the proportion that the length of all the track owned or used in such taxing district bears to the whole length of all the track owned or used in this state, except the value of all station houses, depots, machine shops and other buildings of an original cost exceeding \$1,000, which shall be deemed to have a situs in the taxing district in which the same are located.

⁶⁷ *People ex rel. Ruchty v. Saad*, 411 Ill. 390, 397, 400-01, 104 N.E.2d 273, 277, 279 (1952):

The duty of the Department of Revenue in establishing uniformity of taxation is not an assessment duty, but an equalizing duty. It has nothing to do with the levying of taxes. It only equalizes the assessed valuations of property so that taxation throughout the State will be uniform for those taxpayers who must pay upon a State-wide assessed valuation.

.
It seems to us that the appellee, as well as the trial court, entirely overlooked the province and duty of the Department of Revenue in applying the equalization formula to the several counties in the State. A large part of the property is taxed on a valuation basis by the local assessors. A considerable part of the corporate property of the State is taxed by the Department of Revenue on a State-wide basis in order to preserve uniformity of the burden of taxation. The mandate of the constitution requires that the ratio of assessed valuations to actual value of the property in the several counties be equalized so each will bear its fair burden. It is for this purpose, among others, that the Department of Revenue is required to scan the assessments in each county, and from information, rules, examinations, sales and analyses determine how near each county comes to assessing the property at its estimated fair cash value He [appellee] calls our attention to *State Board of Equalization v. People ex rel. Goggin*, 191 Ill. 528, and *Chicago, Burlington & Quincy R.R. v. Cole*, 75 Ill. 591, which do not relate to the present subject in any way. Those two cases were questions of original assessment of property required to be made by the State Board of Equalization. . . . Equalization was not involved.

⁶⁸ ILL. REV. STAT. ch. 120, §§627, 629a, 630, 632, 642 (1965).

are largely a product of the Butler Bills, enacted by the general assembly in 1945.⁶⁹ The history and purpose of this legislation was set forth in *Anderson v. City of Park Ridge*:⁷⁰

For several years prior to the enactment of . . . [the Butler Bills] the law directed that all property should be assessed for tax purposes at its full cash value. Notwithstanding the explicit command of the statute, a practice was followed whereby the assessing officers of the several counties fixed the assessed value at less than full value. The assessing officers of the several counties, acting independently of the officers of other counties, determined the ratio of assessed value to full value in their respective counties. The result was that there was a wide variance between the high and low ratios. When the State Tax Commission and its successor, the Department of Revenue, undertook to assess property within its taxing jurisdiction, such as railroad property which was located in several counties, it encountered the difficulty arising from such difference in ratios in the several counties. . . .

. . . [Consequently] the General Assembly made a survey and study of the general taxing situation and particularly in reference to the uniformity in valuing property. Following such consideration, . . . [the Butler Bills] were adopted. There is no doubt that in the adoption of such acts the General Assembly intended to correct the irregularities appearing in the assessment of property. The first objective was to change the law to require a stricter compliance with the direction to value property at its full, fair market value. To accomplish this, local assessing officers were, as formerly, commanded to assess at full value. Section 146 was amended in 1945 to give the Department of Revenue greater power in its equalization work. . . . The duty was enjoined on the Department to annually ascertain and determine the percentage relationship for each county between the valuations at which property had been assessed by the local assessing officers as revised by the boards of review or boards of appeal, as the case might be, and the estimated full, fair cash value of such property. To ascertain the full, fair cash value of property in any given county, the Department was empowered to determine it by comparison of assessed valuations as revised by boards of review and boards of appeal. In the determination of the full value of property in a particular county it was authorized to make estimates of full value by analysis of property transfers, property appraisals and such other sources as to the Department should seem proper and reasonable. The third paragraph of said section 146 provides that when the Department has ascertained and determined the ratio which the local assessed value of each county bears to the full, fair cash value it shall ascertain the amount to be added to or deducted from the aggregate assessment as fixed by the local assessing officers. The purpose as stated in the statute is 'to produce a ratio of assessed to full, fair cash value equivalent to one hundred per cent.' The result thus obtained is certified to the county clerk of the particular county and becomes the basis for the extension of taxes in that county for the year covered by the certificate.⁷¹

The legislative decision was plain: all real property, including both locally assessed real estate and railroad property assessed by the Department of Revenue was to be assessed at 100 per cent of its actual value. Specifically, the older practice of

⁶⁹ See Troupis, *Full Fair Value Assessment in Illinois*, 44 ILL. L. REV. 160 (1949).

⁷⁰ 396 Ill. 235, 72 N.E.2d 210 (1947).

⁷¹ *Id.* at 245-46, 72 N.E.2d at 215-16.

assessing (and equalizing) real property below full value was to be abolished on both the local and the state level.⁷²

The practical operation of the Illinois property tax system, however, has been at considerable variance with this legislative intent. The Department of Revenue was reasonably faithful, it would appear, in assessing railroad property at 100 per cent of its actual value.⁷³ The Department was less assiduous in the case of locally assessed real estate. Such property came to be assessed, county by county, at 50 to 55 per cent of actual value, even after application of the multiplier specified by the Department.⁷⁴ The result was that railroad property came to be taxed at an effective rate considerably in excess of that imposed upon locally assessed real estate.

The railroads of the State commenced, more than a dozen years ago, a series of lawsuits challenging this situation. As indicated above, their first efforts, as reflected by the decisions of the supreme court in the precursor "Railroad Cases," were unavailing. However, during the years 1961 to 1965, in the Railroad Cases proper, the supreme court ruled consistently and decisively in favor of the taxpayer railroads.

The railroads had first to resolve two interrelated questions of substance and procedure. The substantive question concerned the nature of their grievance—was railroad property overvalued, for purposes of taxation, or was locally assessed property undervalued? The railroad industry was convinced that it bore a disproportionate share of Illinois property taxation; but railroad valuation involves so many intangible factors that there was uncertainty, apparently, as to where the emphasis properly should be placed—whether on the excessive assessment of railroad property by the Department of Revenue, or on the insufficient value assigned, for tax purposes, to locally assessed property, even after application of the multiplier certified by the Department.

⁷² *Chicago, Burlington & Quincy R.R. v. Dep't of Revenue*, 17 Ill.2d 376, 390-91, 161 N.E.2d 838, 847 (1959):

What the Court referred to as the 'Recognized Custom' of the State Board of Equalization and the Tax Commission in prior years, to debase or equalize assessed valuations of railroad operating property below full value in order to achieve uniformity with local assessments, is no longer permissible under the Revenue Act With the enactment of the Butler Amendments to the Revenue Act of 1945, the General Assembly required that all valuations upon which tax rates are extended must be at full, fair cash value. It is the duty of the Department of Revenue to carry out the statutory mandate. Assessments made by the Department must be at full value, . . . and local assessments must be equalized by the Department to full value by increasing or reducing the aggregate assessed valuations made in the several counties.

⁷³ *People ex rel. Musso v. Chicago, Burlington & Quincy R.R.*, 33 Ill.2d 88, 210 N.E.2d 196 (1965).

⁷⁴ *E.g.*, *People ex rel. Hillison v. Chicago, Burlington & Quincy R.R.*, 22 Ill.2d 88, 174 N.E.2d 175 (1961).

If the question was determined to be one of overassessment of railroad property by the Department, an aggrieved taxpayer was very likely limited, by way of remedy, to a proceeding under the Administrative Review Act.⁷⁵ On the other hand, if the matter was considered to be one of undervaluation, for tax purposes, of locally assessed property — for example, that railroad property was assessed by the Department at 100 per cent of its actual value, with locally assessed property, even after application of the Department's multiplier, assessed at but 50 per cent of its actual value — it was possible that alternative remedies would be available. One procedure would then be judicial review, under the Administrative Review Act, of the Department's orders certifying multipliers to the several counties in which the railroad owned property, to the end that the locally assessed property in those counties would also be assessed at 100 per cent of its actual value; the other procedure would be to seek relief, county by county, upon the applications of the several county collectors for judgment for taxes paid under protest, by way of objections charging fraudulent and unconstitutional discrimination in the assessment of the railroad's property.⁷⁶ The railroads appear to have tried all three of these procedures.

In *Chicago and North Western Railway Company v. Department of Revenue*,⁷⁷ a proceeding brought under the Administrative Review Act, the taxpayer sought only to challenge the assessment of its property made by the Department of Revenue, with particular emphasis on the alleged defects in the valuation formula employed by the Department. The trial court ruled for the taxpayer railroad, and reduced the assessed value of its property in Illinois from \$86,750,000 to \$50,000,000 — a reduction of approximately 40 per cent. The supreme court, on appeal, reversed. The court's opinion, generally speaking, was not favorable towards efforts to challenge, by direct judicial review, the value placed on railroad property by the Department of Revenue.

Chicago, Burlington & Quincy Railroad Company v. Depart-

⁷⁵ See *People ex rel. Chicago & North Western Ry. v. Hulman*, 31 Ill. 2d 166, 201 N.E.2d 103 (1964); *People ex rel. Nordlund v. Lans*, 31 Ill.2d 477, 479-81, 202 N.E.2d 543, 545-46 (1964); *People ex rel. Cain v. Illinois Central R.R.*, 33 Ill.2d 232, 210 N.E.2d 516 (1965), in which the court said:

It is apparent that both the *Chicago & North Western* and *Lans* cases were concerned with the availability of the tax objection procedure when the objection involved an attack on the amount of an original assessment. In the case now before us, the railroad has raised no issue as to the amount of the original assessment of its property by the Department of Revenue The railroad's contention in this case is that discriminatory multipliers were applied to locally assessed property with the result that the equalized value of the locally assessed property was considerably less than its full fair cash value.

Id. at 234, 210 N.E.2d at 517.

⁷⁶ *Chicago, Burlington & Quincy R.R. v. Dep't of Revenue*, 17 Ill.2d 376, 391, 161 N.E.2d 838, 847-48 (1959).

⁷⁷ 6 Ill.2d 278, 128 N.E.2d 722, *cert. denied*, 351 U.S. 950 (1955).

*ment of Revenue*⁷⁸ was also a proceeding brought under the Administrative Review Act. As in the *North Western Railway* case, the taxpayer challenged, as excessive, the assessment of its property made by the Department of Revenue. On this issue the taxpayer succeeded, if only to a slight extent, in the trial court, which set aside the Department's assessment of \$147,000,000 "at least to the extent it exceeded . . . \$144,600,000." But the supreme court, as in the *North Western Railway* case, reversed the trial court on this issue.

However, in the *Burlington* case, the taxpayer had also raised, as an alternative issue, the question of undervaluation of locally assessed property:⁷⁹

The plaintiff's final contention is that once the Department has determined the 'fair cash value' of its operating property it must then equalize its assessed valuation so that the valuation certified to the local taxing units will be uniform with locally assessed valuations, as equalized by the Department. Underlying this contention is the allegation that the Department does not equalize local assessments to full value as the Revenue Act requires it to do each year. . . . To support this allegation the plaintiff presented evidence at the hearing before the Department to the effect that the equalized assessed value of real estate in Illinois in 1955 was approximately 50% of its full, fair cash value. If this charge can be substantiated, as to 1957 assessments, the plaintiff's operating property is bearing a disproportionate share of its tax burden in violation of the constitutional requirement of uniformity. . . .
 . . . The Department, however, refused to consider the plaintiff's evidence on the ground that the hearing requested by the plaintiff was concerned with the Department's duty to assess the value of railroad operating property and not with its duty to equalize local assessments throughout the State to full value.⁸⁰

The supreme court also sustained the Department on this alternative point, but on narrow procedural grounds, and indicated that the taxpayer had valid grounds of complaint which it might advance, either in further administrative proceedings before the Department, or by way of objections in the separate legal proceedings brought by the several county collectors for judgment.⁸¹

We think the Department was correct. It has no authority to reduce its assessed valuation of the plaintiff's property to less than full value. And the time sequence prescribed by the Revenue Act for local assessment of property makes it unlikely that the various county equalization factors will have been determined at the time that the Department is valuing railroad property. . . . But appropriate remedies are available if the plaintiff's property is in fact bearing a disproportionate share of the tax burden in some taxing districts. Plaintiff may petition the Department for a reconsideration of the equalization multiplier certified to a county clerk for application to local assessments. . . . And such an objection may also be raised to a county collector's application for judgment and order of sale of its real estate.⁸²

⁷⁸ 17 Ill.2d 376, 161 N.E.2d 838 (1959).

⁷⁹ *Id.* at 390-91, 161 N.E.2d at 847.

⁸⁰ *Id.*

⁸¹ *Id.* at 391, 161 N.E.2d at 847-48.

⁸² *Id.*

The principal precursor case, however, was *People ex rel. Callahan v. Gulf, Mobile & Ohio Railroad Company*.⁸³ In this case the taxpayer appellant had filed objections in the county court of Madison County to the county collector's application for judgment and order of sale of real estate based on delinquent non-payment of taxes for the year 1951. A motion by the collector to strike the objections was sustained and, thereafter, the court entered judgment against the taxpayer for the amount of tax it previously had paid under protest. The taxpayer appealed.

The substance of the taxpayer's position, both in the trial court and on appeal, was that its property, which had been assessed at its full, fair cash value by the Department of Revenue, had been "excessively and illegally taxed when locally assessed property in the county was fraudulently and intentionally undervalued at less than full, fair cash value."⁸⁴ The objections further alleged that the fraud was brought about when the county assessing authorities knowingly assessed local property at a small percentage of its actual value and the Department of Revenue intentionally affixed a multiplier "which would produce a debased equalized and assessed valuation not to exceed 60 per cent of the full, fair cash value of locally assessed property."⁸⁵

The supreme court directed its attention first to the procedural question and concluded that the taxpayer railroad had pursued a proper remedy, stating that "the question of discrimination in assessments may properly be raised on an application for judgment for delinquent taxes."⁸⁶ The court next summarized the applicable principles delimiting the scope of judicial review of tax assessments:

Where an assessment is sought to be impeached for fraud, the burden is on the objector to show either actual fraud by clear and sufficient evidence, or to show that an assessment is so grossly excessive as to amount to evidence of fraud and an indication that the taxing authorities, in making the same, wilfully and intentionally discriminated against the said objector. . . . Although the foregoing cases speak only in terms of fraudulent overvaluation of property, we are of the opinion that logic and justice require that the same established principles apply where an assessment is sought to be impeached on the grounds of fraudulent undervaluation.⁸⁷

Having thus defined the conditions for judicial intervention, the court proceeded to review the taxpayer's pleadings, and concluded that the allegations contained therein were inadequate for the purpose:

Considering next the question of whether appellant's final pleading is sufficient to make a showing of constructive fraud, we find it alleged generally that locally assessed property was valued, assessed

⁸³ 8 Ill.2d 66, 132 N.E.2d 544, *cert. denied*, 352 U.S. 832 (1956).

⁸⁴ *Id.* at 68, 132 N.E.2d at 546.

⁸⁵ *Id.*

⁸⁶ *Id.* at 69, 132 N.E.2d at 547.

⁸⁷ *Id.* at 70, 132 N.E.2d 547.

and equalized at not exceeding sixty percent of its full, fair cash value, whereas appellant's property was assessed and equalized at the full, fair cash value thereof. By means of a schedule, drawn by appellant and incorporated into the objections, it is specifically alleged that the full, fair cash value of all locally assessed property amounted to \$327,453,141 for the year 1951, but that all of such property had been placed on the Madison County tax rolls for that year in an amount totalling only \$496,471,885. . . . It is appellant's contention that the 330 million dollar discrepancy in the reckoning of locally assessed property values is so gross as to demonstrate that the taxing authorities could not have been honest in their valuation, thus entitling appellant to relief from a constructive fraud. We are of the opinion, however, that the rule of law contended for cannot be applied to the case made out by the bare allegations of value relied upon.

. . . There are no facts alleged which either afford a basis for accepting the allegation that local property was assessed at other than its full, fair cash value, or which would permit a court to make the comparison in values the appellant seeks to draw.⁸⁸

In summary, the three precursor cases — *North Western, Burlington* and *Callahan* — established the following propositions:

1. There was little or no prospect of demonstrating, on direct judicial review, that the Department of Revenue had overvalued a railroad's property in Illinois. Better, by far, to assume that the Department had done what the statute commanded — assessed such property at its full, fair cash value, and to proceed accordingly.
2. Assuming that a railroad company was assessed at 100 per cent of its actual value, and that locally assessed property was assessed at but 50 to 55 per cent of its actual value — then, in that event, the railroad's property was bearing a disproportionate share of the tax burden in violation of the constitutional requirements of uniformity, and "appropriate remedies are available."⁸⁹
3. Alternative remedies existed, by which a railroad might establish that locally assessed property was in fact undervalued for purposes of taxation. More important, one of these remedies was a proceeding before the local county court, by way of objections to the application of the county collector for judgment for taxes previously paid under protest by the railroad. This alternative had the great, if incidental, advantage of permitting a railroad to avoid the other available remedy: a proceeding, under the Administrative Review Act, challenging the multiplier certified to that county by the Department of Revenue. It is apparent that the latter type of proceeding, in which the railroad would be seeking, in effect, to increase the assessments on locally assessed property from

⁸⁸ *Id.* at 71-72, 132 N.E.2d at 547-48.

⁸⁹ *Chicago, Burlington & Quincy R.R. v. Dep't of Revenue*, 17 Ill.2d 376, 390-91, 161 N.E.2d 838, 847 (1959).

50 per cent to 100 per cent of full, fair cash value, would arouse intense local opposition. If the railroad were successful, not only would local property assessments double, always a psychologically damning development, but the tax ceilings imposed by state law on local governments, would, in effect, likewise double, with a strong likelihood of a rise in local government spending, and taxes.

4. Finally, the *Callahan* case narrowed the issue in the railroad cases to a very simple, albeit enormously difficult, problem of proof: how to demonstrate, by evidence satisfactory to a court of law, a fact which was a matter of common knowledge, yet denied officially by all in authority — that locally assessed property in Illinois was valued for tax purposes, even after application of the multiplier certified by the Department of Revenue, at but 50 to 55 per cent of its full, fair cash value.⁹⁰ On this objective, the railroad litigants had henceforth to center their efforts; and the success which they were to achieve, in satisfying this evidentiary obligation, is probably the single most significant aspect of the Railroad Cases.

The "Railroad Cases" — Main Phase

The first of the Railroad Cases so denominated was *People ex rel. Hillison v. Chicago, Burlington & Quincy Railroad Company*.⁹¹ This case involved an appeal from an order of the county court of Lee County sustaining the taxpayer railroad's objections to property taxes and ordering a refund of 45 per cent of the taxes paid by it under protest for the year 1958. The basis of the

⁹⁰ See *Tuttle v. Bell*, 377 Ill. 510, 37 N.E.2d 180, *cert. denied*, 315 U.S. 815. (1941). In this case, some 158 individual farmers, in a suit brought to enjoin the county treasurer from collecting a portion of the taxes levied against their real estate, alleged that the assessed value of farm lands had been fixed at 35 per cent of their fair cash value while city property had been fixed at 25 per cent of such value. They attempted to show this by the reports of three different surveys, one made under the supervision of the State Tax Commission, which relied on data obtained from studying eighty voluntary sales of farm lands and two hundred twenty-nine voluntary sales of city property. The trial court dismissed the complaint, and the supreme court affirmed. The court, in part, said:

If plaintiffs' grievance is directed at an over-assessed valuation from which fraud is presumed, then they have failed to plead the facts to which such a presumption could be applied. The allegations in reference to over-assessment of farm lands are based on the sale values of 80 tracts of farm lands but there is no allegation that any of plaintiffs' lands formed a part of the 80 farms so considered, nor were any facts pleaded to show a similarity between any of the farms sold and plaintiffs' lands. On the other hand, if plaintiffs' claim rests upon the fact the city property was valued at a lower percentage of its fair market value than the farm lands, then the gist of their claims is that their land should be relieved from a part of the taxes for the reason other real estate was not assessed high enough. A court of equity will not grant injunctive relief under such circumstances.

Id. at 514, 37 N.E.2d at 182.

⁹¹ 22 Ill.2d 88, 174 N.E.2d 175 (1961).

objections was that the railroad's property was assessed by the Department of Revenue at 100 per cent of full, fair cash value, while locally assessed property, even after giving effect to the multiplier certified by the Department of Revenue, was assessed at no more than 55 per cent of full value, and that this action on the part of the Department was deliberate and intentional, thereby constituting constructive fraud.

In the course of the trial court proceedings, the taxpayer railroad offered voluminous testimony and exhibits relating to the assessment level of locally assessed property, after equalization. To prove the assessment and equalization of such property at percentages below a 100 per cent valuation, the taxpayer railroad presented numerous exhibits consisting of various sales-assessment and appraisal-assessment ratio studies, plus the testimony of experts on assessment valuations and statistics.⁹² Some of these were Department of Revenue ratio studies. The record showed that in preparing these studies, the Department had made a comprehensive survey of voluntary, arms-length sales of property and had compared the prices at which the property was sold to the assessed valuation of the property, and that the resulting ratios were then tabulated to determine median ratios. In some counties separate median ratios were determined for rural and urban property. Each such median was weighted to represent the proportion of each class of property to all of the property in the taxing district. The weighted ratios were then averaged to get the weighted sales ratio for the county. The supervisor of the property tax division also prepared a state-wide average assessment ratio showing the relationship, in terms of a percentage, of equalized assessed value to full value.

In addition, the United States Census Bureau study of the proportion of Illinois assessed values, as equalized, to full, fair cash values, ascertained through sales prices during the first six months of 1956, was introduced, and other comparisons of assessed values to appraised values, as of April 1, 1958, were submitted. . . . Sales ratio studies and appraisal ratio studies of the assessment level in Lee County in 1958 were also introduced.⁹³

On appeal, the supreme court sustained the finding of the trial court that locally assessed property, even after giving effect to the multiplier certified by the Department of Revenue, was assessed at less than 55 per cent of full, fair cash value in 1958. Said the court:

Defendant offered voluminous testimony and exhibits relating to the assessment level of locally assessed property, after equalization. This consisted chiefly of studies of the assessment level of Illinois property made by the Department of Revenue each year in accordance with the Revenue Act of 1939, as amended. . . . Under this

⁹² *Id.* at 97, 174 N.E.2d at 179.

⁹³ *Id.* See Parham, *Taxation of Property in Illinois*, 1961 U. ILL. L. F. 645, 648-49.

mandate, the Department annually determines the percentage relationship for each county of the State between the valuations at which locally assessed property, which includes all real estate except that owned by a railroad, is listed by assessors, and the estimated full, fair cash value of such property. This was done through a comparison of the assessed values and full, fair cash values of property shown to be the subject of *bona fide* sales, established through an analysis of property transfers and other means Each of these studies found that locally assessed property was equalized by the county multipliers of the Department of Revenue at less than 55% of full, fair cash value. The Department's studies established a State-wide average ratio for local property for 1957 and eleven prior years. Because it was shown that total assessed values increased only slightly in 1958 over 1957, no substantial change in the 1958 assessment level could have occurred. . . .

Studies of the type introduced in this case to determine the general assessment level of Illinois property, carried out by the Department of Revenue pursuant to statute (Ill. Rev. Stat. 1957, chap. 120, par. 627), have been recognized by this court. . . .

Plaintiff offered no evidence to contradict any of these studies or the other evidence presented by defendant showing the assessment level. The trial court made a finding of fact that locally assessed property, both in Lee County and in the State generally, was assessed at less than 55% of full, fair cash value in 1958. With uncontradicted evidence supporting this finding, it will not be disturbed on appeal.⁹⁴

In the supreme court, the county collector relied heavily upon an attack on the jurisdiction of the trial court. He contended that the objections of the taxpayer railroad necessarily required the trial court to review the Department of Revenue's determination of the county multipliers and that the exclusive remedy by which this might be done was by the filing of a petition with the Department seeking revision of the multipliers as prescribed in section 148a of the Revenue Act, with judicial review of such administrative decision in the manner provided in section 138 and in the Administrative Review Act.

The supreme court, however, held that the county court had jurisdiction.⁹⁵ In so holding, the court relied, in part, upon its

⁹⁴ People *ex rel.* Hillison v. Chicago, Burlington & Quincy R.R., 22 Ill.2d 88, 96-98, 174 N.E.2d 175, 179 (1961).

⁹⁵ Section 148a, ILL. REV. STAT. ch. 120, §629a (1965), provides that within thirty days after the county clerk receives from the Department of Revenue its estimate of the full, fair cash value of locally assessed property in the county, any taxing district or taxpayer, claiming to be detrimentally affected thereby, may petition the Department for a reconsideration of such estimate and upon such reconsideration, after hearing, the Department can confirm or revise the estimate. Section 138, ILL. REV. STAT. ch. 120, §619 (1965), gives the circuit court of the county in which the property is assessed, or in which some part of such property is situated, the power to review all final administrative decisions of the Department in administering the provisions of the Revenue Act. By amendment of this section in 1947, the review procedure is governed by the Administrative Review Act. ILL. REV. STAT. ch. 110, §§264-279 (1965). In holding that the trial court had jurisdiction, the supreme court concluded that the provisions for administrative review under section 138, as amended in 1947, were meant to be applicable to original assessments made by the Department of Revenue, and that the subsequent enactment of Section 148a did not evidence a legislative intent to make the procedure thereunder an exclusive remedy.

earlier rulings, or dicta, in the *Burlington* and *Callahan* cases, wherein the court had stated that the tax objection procedure was available to the railroads as a remedy under circumstances of constructive fraud resulting from debasement of locally assessed property.⁹⁶

The county collector also relied, in the supreme court, upon a fairly intricate argument to the effect that the Department had, in fact, assessed the Illinois property of the taxpayer railroad at substantially less than its full, fair cash value.⁹⁷ On this issue, too, the supreme court ruled against the collector.

The trial court had ordered a refund of 45 per cent of the taxes paid under protest by the taxpayer railroad. The practical effect of this order was to reduce the assessment of the railroad's property to 55 per cent of its full, fair cash value. However, the supreme court had previously ruled in the *Burlington* case, that the Butler Bills forbade such equalization of assessments at less than 100 per cent of actual value. The court ruled that the proper measure of recovery for the taxpayer railroad was the

⁹⁶ The judicial remedies available to a taxpayer railroad might be summarized as follows:

1. In the event of overassessment of the railroad's property by the Department of Revenue (assessment by the Department of the property at more than 100 per cent of its actual value), the railroad might bring a proceeding, pursuant to the Administrative Review Act, to review the Department's assessment.
2. In the event of underassessment, even after application of the multiplier certified by the Department, of locally assessed property (such property being assessed at a lesser percentage of its actual value than the percentage at which the railroad's property is assessed, whether the railroad's property be assessed at 100 per cent of its actual value, or at some lesser percentage), the railroad would have a choice of remedies:
 - a. A proceeding, pursuant to the Administrative Review Act, to review the multiplier certified to a given county, to the end that the multiplier finally certified would be sufficiently great that the locally assessed property would be assessed at the same percentage of actual value as was the railroad's property.
 - b. A proceeding, by way of objections to the application of the county collector for a judgment for taxes levied against the railroad and paid under protest, alleging the illegally disproportionate assessment and taxation of the railroad's property in such county by reason of such underassessment of locally assessed property.

⁹⁷ The burden of proof was on the railroad taxpayer, in each of the Railroad Cases, to demonstrate that its property was assessed at a substantially greater percentage of its actual value than was locally assessed property. If the railroad were able to assume, as a starting point, that its property was assessed at 100 per cent of actual value — then the railroad's task was considerably simplified; it need prove only the lesser percentage applied in the case of locally assessed property. On the other hand, if the railroad's property were assessed at some percentage of actual value other than 100 per cent, the railroad would have to prove both the percentage employed in the assessment of its own property, and the percentage used in the case of locally assessed property. For this reason, the several railroad taxpayers invoked the presumption that the Department of Revenue had performed its statutory duty, and had assessed the property of the railroad taxpayer in question at 100 per cent of its actual value; the local authorities, on the other hand, repeatedly sought, on varying grounds, to demonstrate that the railroad's property had been assessed at some other, lesser percentage of its actual value.

difference between the local taxes in fact levied against it, and the taxes which would have been levied against it had locally assessed property been valued, for tax purposes, at 100 per cent of full, fair cash value. Accordingly, the supreme court remanded the case with directions to recompute the exact amount of the refund due the taxpayer railroad. As a practical matter, it is understood that the recovery, so redetermined, differed but slightly from the trial court's initial award.

The second Railroad Case was a consolidation, for hearing, of two causes: *People ex rel. Kohorst v. Gulf, Mobile and Ohio Railroad Company* and *People ex rel. Kohorst v. Chicago and North Western Railway Company*.⁹⁸ In these cases, the county collector of Sangamon County had filed applications for judgment in the county court against the taxpayer railroads for 1957 taxes paid under protest. The railroads in each of these cases filed substantially similar objections, and appealed from orders overruling them.

These objections were based upon the contention that the property in Illinois of the Gulf, Mobile and Ohio Railroad Company, and of the Chicago and North Western Railway Company, as distributed to Sangamon County and its taxing districts by the Department of Revenue, was assessed and equalized at full, fair cash value, while locally assessed property in the county and its taxing districts was assessed and equalized at levels which did not exceed 50 per cent and 38.50 per cent, respectively, of such value. The objections further asserted that the officials charged with assessment and equalization functions willfully and deliberately assessed local property at the lower levels, and that the officials' misconduct in this regard resulted in gross discrimination against the railroads and was constructively fraudulent. The measure of recovery sought was the difference between what the two railroads were in fact taxed and what they should have been taxed had locally assessed property been assessed and equalized at its full, fair cash value.

As in the *Hillison* case, the evidence adduced in the trial court, by the railroads, with regard to the assessment of locally assessed property, was quite extensive:

The evidence of the ratio of locally assessed property to full, fair cash value consisted of exhibits, sales-assessment ratio studies, appraisals and appraisal studies, a survey by the Sangamon County board of review, and the testimony of experts.

The Department of Revenue determines the ratio of assessments of locally assessed property to full, fair cash value. The assessed value is obtained from abstracts of the assessment books by each county clerk after such books have been certified by the boards of review. Full value is obtained from edited samples of actual sales

⁹⁸ 22 Ill.2d 104, 174 N.E.2d 182 (1961).

in each county. These samples have been secured and edited in the same manner for each year since 1951. The Department considers the sales ratios for the first three years of the four-year period next preceding the subject year, since ratio studies of those three years will have been completed. The ratio of assessed to full value is first determined in each transaction, and the ratios for all eligible transactions are tabulated to determine median ratios. Separate medians in Sangamon County are determined for rural and urban property, and such median ratios are weighted to represent the proportions which each class of property is of all the property in the taxing district for which the ratio is being determined, and finally the weighted ratios are then averaged to determine the average weighted sales ratio for the county.

. . . Dr. Rolf A. Weil, Dean of the College of Administration of Roosevelt University expressed the opinion that the foregoing method was accurate and substantially that recommended by the National Association of Tax Administrators. . . .

Dr. Frederick A. Ekeblad of Northwestern University testified that in his opinion the procedure followed by the Department of Revenue is well known and accepted, and affords a statistical basis for arriving at the ratio of assessment to full value with a minimum number of sample sales. . . .

H. Clyde Reeves, former Kentucky Commissioner of Revenue, gave an opinion that there were adequate samples to assure accuracy in the method used by the Department and agreed with the conclusions reached by Maynard, Dr. Ekeblad, and Dr. Weil.

There was much more evidence of other tests, studies and criteria bearing upon the value placed on locally assessed property which substantiates the evidence of its valuation at just under 50%. We see no purpose, however, in further comment, since it would merely be cumulative.⁹⁹

The supreme court, on the basis of the foregoing evidence, reversed and remanded with directions to order refunds to the taxpayer railroads.¹⁰⁰

In the *Kohorst* case, as in the *Hillison* case, the county collector relied heavily on the jurisdictional argument that the sole remedy of the taxpayer railroads was by direct judicial review, under the Administrative Review Act, of the Department of Revenue's orders certifying multipliers for the several counties in which they owned property, and that the county court had no jurisdiction to consider their objections upon the application of the county collector for judgment for taxes paid under protest. As in the *Hillison* case, this contention was rejected by the court.

The *Kohorst* case also raised the question whether the state, county, or township ratio of underassessment was to be applied in determining the amount of refunds to which railroads were entitled. The court ruled in favor of using the county ratio of underassessment for this purpose. In brief, the recovery of the railroad taxpayers was calculated as if the Department of Revenue had done what the Revenue Act enjoined it to do: certified a multiplier to the county as a unit sufficiently great that property

⁹⁹ *Id.* at 109-11, 174 N.E.2d at 186.

¹⁰⁰ *Id.* at 112-15, 174 N.E.2d at 187.

locally assessed would have been valued, for tax purposes, at 100 per cent of its full, fair cash value.¹⁰¹

The next of the Railroad Cases was *People ex rel. Dallas v. Chicago, Burlington & Quincy Railroad Company*.¹⁰² This involved an appeal from the county court of Johnson County. The county collector had filed applications for judgment against the taxpayer railroad for 1958, 1959 and 1960 taxes paid under protest. The objections of the railroad taxpayer were stricken on motion of the collector, and judgment entered in his favor. The railroad taxpayer appealed to the supreme court.

The railroad's objections were based upon the contention that its property was assessed by the Department of Revenue at its full, fair cash value, while locally assessed property was assessed and equalized at levels of less than 55 per cent of full, fair cash value. The undervaluation of locally assessed properties resulted in a lower tax base and hence a higher tax rate than would otherwise be the case, causing a disproportionately large amount of tax to be borne by the railroad's property. This discrimination was so gross as to be constructively fraudulent.

The county collector relied on the court's decision in the *Callahan* case, contending that the objections of the taxpayer railroad alleged insufficient facts upon which to base a case of constructive fraud. The supreme court rejected this contention in an opinion which reflected how much the railroads had learned from the *Callahan* case, as to what they must be prepared to allege, and prove, in such a case:

We do not think a contrary conclusion is called for by *People ex rel. Callahan v. Gulf, Mobile and Ohio Railroad Co.* . . . upon which the collector relies. In that case we affirmed an order striking objections of the present nature where they merely alleged generally that locally assessed property was intentionally undervalued, and where the figure alleged to be the full value of locally assessed property was unsupported by any alleged factual basis. In the case at bar we are not confined to bare allegations of value. Not only are figures given but it is alleged that from records within the Department's official files it could be seen that local properties were being assessed at small percentages of their full fair cash value, and that the Department knew or should have known therefrom that the multiplier used was insufficient to raise the assessed value even to 50% of full value. It is apparent that the stated figures are based not upon conjecture, or upon mere computations from an assumed undervaluation percentage, but upon records and studies in the official files of the Department of Revenue. The *Callahan* case is not controlling.¹⁰³

The supreme court reversed the county court, and remanded the cases with directions to overrule the motions to strike.

The fourth so-called railroad case was *People ex rel. Wenzel*

¹⁰¹ *Id.* at 112-15, 174 N.E.2d at 187-88.

¹⁰² 26 Ill.2d 292, 186 N.E.2d 335 (1962).

¹⁰³ *Id.* at 295-96, 186 N.E.2d at 337-38.

v. Chicago and North Western Railway Company,¹⁰⁴ which involved an appeal from the county court of Macoupin County. The county collector had filed applications for judgment for the taxes which the taxpayer railroad had paid under protest for the years 1956, 1957, 1958 and 1959. From orders overruling its objections to such taxes the taxpayer railroad appealed to the supreme court.

With respect to each year of assessment the objections alleged that the railroad's property in Macoupin County had been assessed at full, fair cash value by the Department of Revenue, but that locally assessed property, even after giving effect to the multiplier certified by the Department, had been assessed at no more than 42.70 per cent of full, fair cash value, for the years 1956, 1957 and 1958, and at no more than 55 per cent for the year 1959. The objections also alleged that the underassessment of the locally assessed property was deliberate on the part of the state and local officials concerned, that it was constructively fraudulent, and that the undervaluation of locally assessed property resulted in excessive, illegal and discriminatory taxes on the railroad's property.

At the hearing on its objections, the evidence tendered by the taxpayer railroad followed the course established by the taxpayers in the *Hillison* and *Kohorst* cases. The taxpayer railroad sought to introduce into evidence studies of the Department of Revenue relating to the assessment level of Illinois property in general, and to the ratio between full value and assessed value in particular. These ratio studies disclosed that Macoupin County assessments, both before and after application of the multiplier certified by the Department of Revenue, were for considerably less than the full, fair cash value in each of the years in question. As had been done in the *Kohorst* case, the taxpayer railroad sought to introduce testimony explaining the ratio studies and expressing opinions as to their reliability. The county collector, in turn, introduced testimony reflecting upon the reliability of the ratio studies, and evidence designed to show that the studies had not been based upon a truly representative sampling of real estate transactions in the county.

The trial court ruled that the ratio studies for the years 1956 and 1957 were not admissible in evidence, because data cards upon which such studies had been based had been destroyed by the Department of Revenue. The trial court then overruled the taxpayer's objections for those years. As to the years 1958 and 1959, the trial court ruled that the ratio study evidence was admissible. The trial court, nonetheless, overruled the tax objections with an express finding that the taxpayer's evidence did not establish that local real property was assessed at a figure

¹⁰⁴ 28 Ill.2d 205, 190 N.E.2d at 780 (1963).

less than 100 per cent of fair cash value. From the trial court's orders overruling its tax objections for the years 1956, 1957, 1958 and 1959, the taxpayer railroad appealed.

The supreme court reversed and remanded with directions to sustain the taxpayer's objections, and to determine the amount of the refund to which it was entitled for each of the years. The court's ruling as to the years 1956 and 1957 dealt, primarily, with various hearsay objections. The ratio studies for those years were based on data cards showing the sales price and assessment detail for particular transactions. The cards had been destroyed by the Department of Revenue before the trial. The court, relying heavily upon the status of the ratio studies as official records made and compiled each year pursuant to statutory mandate, ruled against the hearsay objections, and held the 1956 and 1957 studies to be competent evidence.¹⁰⁵

The court went on to consider the issues raised by the taxpayer's objections to the 1958 and 1959 taxes. The court's comments as to these years also applied, of course, to the years 1956 and 1957 once the taxpayer railroad's evidence as to those years was held admissible.¹⁰⁶ The court stated:

There remains for consideration the issue raised by the denial of defendant's objections to the 1958 and 1959 taxes, *viz.*, whether the sales-assessment method of determining the ratio between full and assessed value is a reliable and competent method. The testimony on this issue is detailed and voluminous, defendant's evidence and witnesses being almost repetitious of what was presented in *People ex rel. Kohorst v. Gulf, Mobile and Ohio Railroad Co.* . . . and we see no beneficial purpose in setting it forth in full. Suffice it to say that witnesses for defendant, who had wide experience in the fields of economics, taxation and statistical studies, testified that the sales-assessment method of determining ratio is a reliable, economical and easily administered method which is widely recognized and employed by various State, Federal and private agencies. An economist testifying for plaintiff,¹⁰⁷ on the other hand, admitted that the sales-assessment method was one of two primary methods of determining ratio, but expressed his preference for the method where full value of the property is determined by appraisal. However, the witness had no experience in making such a study, had no idea as to the cost or practicability of the appraisal method, and conceded that the principal disadvantage of the latter method was the human errors of judgment in making appraisals. At the same time, he agreed that the sales-assessment method, being based upon actual sales had the advantage of objectivity, and that there is probably no better criterion of actual value than what a piece of property will sell for in a market between a willing buyer and a willing seller.

. . . .

We cannot say that the plaintiff's proof so detracts from the reliability of the ratio studies that they should not be accorded the

¹⁰⁵ *Id.* at 209-14, 190 N.E.2d at 782-85.

¹⁰⁶ *Id.* at 214-16, 190 N.E.2d at 785-86.

¹⁰⁷ Dr. H. K. Allen, who also testified in *People ex rel. Enrietta v. Gulf, Mobile & Ohio R.R.*, 29 Ill.2d 605, 610, 195 N.E.2d 170, 174 (1964). See text at notes 109-11 *infra*.

same probative value they were given in the *Hillison* and *Kohorst* cases. At best the evidence shows two accepted methods by which the ratio between full and assessed value may be determined, each with its advantages and each with its disadvantages, and it is the decided weight of the evidence in this record that the sales-assessment method is the most widely accepted and used. Our statute requires only that the Department use such means as it deems 'proper and reasonable' to make its studies on assessed valuations, and a mere difference in opinion as to what is the best or most reasonable method is not sufficient to bring the matter within the range of judicial review. (Cf. *Schreiber v. County of Cook*, . . .) on the record here, we find that the studies were reliable and competent evidence of the ratio between full and assessed value, and that, based upon the studies for the years in question, the court's findings that defendant failed to prove that local real property was assessed at less than 100% of fair cash market value are against the manifest weight of evidence.¹⁰⁸

The next of the Railroad Cases was *People ex rel. Enrietta v. Gulf, Mobile & Ohio Railroad Company*,¹⁰⁹ which involved an appeal from the county court of Grundy County. The county collector made application for judgment for the 1959 taxes which the taxpayer had paid under protest. The taxpayer railroad filed objections. Among these objections was No. 12, in which the taxpayer alleged that while its property in the county was assessed at full value, the county level of locally assessed property did not exceed 41.5 per cent and the equalized assessment did not exceed 50 per cent of full, fair cash value. Assessment of local property

¹⁰⁸ *People ex rel. Wenzel v. Chicago & North Western Ry.*, 28 Ill.2d 205, 215-16, 190 N.E.2d 780, 785-86 (1963):

Testifying more directly to the employment of the sales-assessment method in these cases, plaintiff's witness stated that he could have no confidence in a sales ratio study in which property is classified only as urban and rural, and stated that, in his opinion, every such study should be based upon a classified universe, (that is a classification of every piece of property in the county as to its use and location,) from which samples representing every class of property would be taken, and the sample properties then appraised. On rebuttal, however, equally experienced witnesses for defendant testified that the classifications insisted upon by plaintiff's witness were of no consequence or usefulness unless the assessors and boards of review maintained similar classifications, which they did not, and that, even then, such a classification was of no significance if the same level of assessment, or percentage of full value, was maintained in the assessment of all classes of property. The same witnesses pointed out that the appraisal method of determining ratio was a costly, time-consuming method which is little used, and testified that the classification of property in Macoupin County on a rural and urban basis was all that was practical and of any use.

To further support the claimed unreliability of the sales-assessment method plaintiff introduced into evidence exhibits listing some 243 transactions selected from the land records of Macoupin County wherein, for the most part, the sales values reflected by the deeds were apparently lower than the assessed valuation. Such evidence, however, was thoroughly discredited. Less than 17 of the transactions met the criteria followed by the Department in its effort to consider only transactions where there was a willing seller and a willing buyer. Further, witnesses for defendant testified without contradiction on rebuttal, that even if the transactions selected by plaintiff were added to the samples considered by the Department in making its studies, the ratios between assessed and full value for the years in question would not be significantly different.

¹⁰⁹ 29 Ill.2d 605, 195 N.E.2d 174 (1964).

was therefore so grossly discriminatory as to be constructively fraudulent.

At the trial, the county collector presented evidence which he asserted established that the taxpayer's assessed value was only about 80 per cent of its full, fair cash market value, and that the sales ratio studies used to arrive at the percentage values of locally assessed property produced an inept result. The trial court overruled taxpayer's objection No. 12, and the taxpayer appealed. The supreme court reversed, and remanded with directions to sustain objection No. 12, and to order a refund to the taxpayer.

With regard to the valuation to be placed upon the taxpayer railroad's property in Illinois, the supreme court ruled that the county collector had failed to overcome the presumption that the Department of Revenue had complied with the statutory mandate, and had assessed such property at its full, fair cash value.¹¹⁰

As to the county collector's attack upon the taxpayer's evidence regarding the sales-assessment ratio studies of locally assessed property, the court said:

Just as there is a presumption that the Department complied with the statute in fixing the railroad's valuation, a like presumption obtains that there was compliance by the officials charged with locally assessing property. The sales-assessment ratio studies for locally assessed property prepared by the Department of Revenue for the years 1951 to 1959, inclusive, were introduced in evidence. They show a fairly steady decline. In 1959 the weighted ratio was 37.52% and after application of the equalization factor (multiplier) it was 45.20% of full, fair cash value. The method of arriving at the result disclosed by such studies has been fully explained in the *Hillison*, *Kohorst* and *Wenzel* cases and need not be repeated. E. L. Maynard, supervisor of the property tax division of the Department of Revenue, testifying under section 60 of the Civil Practice Act, said that the procedures used are the same as those in other down-state counties and the same as those used for a number of years. He further stated that there were no significant changes in the level of market values in Grundy County. These ratio studies were sufficient to overcome the presumption that locally assessed property was at full, fair cash value.

.....
The collector asserts that the sales-assessment method used by

¹¹⁰ *Id.* at 607-09, 195 N.E.2d at 175-77:

The Department of Revenue of the state of Illinois has the duty of determining the fair cash value of railroad property. When the assessment has been made and certified, as here, there is a presumption that the Department complied with the statutory mandate, and that the assessment is the full, fair cash value. This presumption finds support in official reports of the Department of Revenue and its predecessor, the Tax Commission, certificates, and expert testimony.

.....
The Department has chosen a method to carry out the statutory mandate and has used it for many years. That method has received the tacit approval of this Court in a number of cases. This attack by the collector upon the method of valuation used by the Department charged with that duty by the State falls short of overcoming the presumption. We are of the opinion that the record bears out the Department's valuation as being the full, fair cash value of the objector's Illinois property.

the Department is unreliable. The proof offered on this subject was very similar to that adduced in the *Wenzel* case. . . . What was said in *People ex rel. Wenzel v. Chicago and North Western Railway Co.* . . . is appropriate here. 'We cannot say that the plaintiff's proof so detracts from the reliability of the ratio studies that they should not be accorded the same probative value they were given in the *Hillison* and *Kohorst* cases.' The assessment-sales ratio studies were admissible and establish the ratio between the full, fair cash value and the assessed value.¹¹¹

The sixth of the Railroad Cases was *People ex rel. Korzen v. Chicago, Burlington & Quincy Railroad Company*,¹¹² which was an appeal from the Circuit Court of Cook County. The county collector made application for a judgment for taxes paid under protest by the taxpayer for the year 1957. The taxpayer railroad filed an objection charging gross discrimination and constructive fraud in that, while its property in Cook County was assessed at full, fair cash value, locally assessed property was assessed at a level no higher than 50 per cent of full, fair cash value. The trial court overruled the objection, and the taxpayer appealed.

The trial court had found that locally assessed property in Cook County was assessed at a level no higher than 50 per cent of its full, fair cash value, that the Department of Revenue had not assessed the railroad's property at full value and that the railroad therefore had failed to prove discrimination and constructive fraud.

No appeal was taken from that portion of the trial court's order finding undervaluation of locally assessed property. Accordingly, the sole issue on appeal was whether the proof adduced by the county collector was sufficient to overcome the presumption that the Department of Revenue had complied with the statute and assessed the taxpayer railroad's property at full value. The theory of the county collector was that evidence of sales of other railroads between 1947 and 1961 demonstrated that the assessments by the Department of Revenue were far lower than full value, and that, therefore, there was no evidence to sustain the taxpayer's contention that its property had been assessed at full value. The only testimony offered by the county collector at the trial was that of two witnesses who prepared graphs and identified exhibits, and that of the Director of Revenue who defined salvage value and answered several hypothetical questions on cross-examination. The exhibits introduced by the county collector related to twelve sales of Illinois railroad property during the years 1947 to 1961.

The supreme court concluded that the collector had adduced no competent evidence to overcome the presumption in favor of the department's assessment and therefore reversed and re-

¹¹¹ *Id.* at 609-10, 195 N.E.2d at 177.

¹¹² 32 Ill.2d 554, 209 N.E.2d 649 (1965).

manded with directions to order a refund computed in accordance with the *Kohorst* and *Hillison* cases.¹¹³

In the course of its opinion, the court took occasion to summarize, as follows, the propositions of substantive law established by the first five Railroad Cases:

It is now settled that where a railroad's assessment is at full value and locally assessed property is so undervalued as to result in gross discrimination against the railroad, the assessment is constructively fraudulent. . . . As stated in *Hillison* and *Kohorst*, the measure of recovery in such case is the difference between the amount of taxes extended against a railroad and the amount which would have been extended had the locally assessed property (at the county level) been equalized at full value.¹¹⁴

In connection with the *Korzen* case, another decision, of similar designation, decided recently, should also be noted: *People ex rel. Korzen v. The Belt Railway Company of Chicago*.¹¹⁵ This was also an appeal from the Circuit Court of Cook County. The county collector made application for judgment for taxes paid under protest by the taxpayer railroad for the years 1959 through 1962. The taxpayer filed objections charging that discrimination in assessment values between its properties and locally assessed property were so gross as to be constructively fraudulent. As in the first *Korzen* case, there was no dispute that locally assessed property was assessed at no more than 50 per cent of its full, fair cash value; and, as in the first *Korzen* case, the disputed questions centered on the county collector's contention that the taxpayer's property had not been assessed by the Department of Revenue at full value. The instant case differed from the first *Korzen* case in that there had been, during one of the years in question, a sale of the properties of the taxpayer. The collector maintained that this "contemporary sale," which was for a sum substantially in excess of the assessed value, established his contention that the Department had not assessed the property of the taxpayer at full value.

Notwithstanding this sale, which had been made in 1962, the trial court entered judgment for the taxpayer railroad, and the supreme court affirmed. The court, however, in rendering its decision, was divided, two justices dissenting and one not participating.

The last of the Railroad Cases was *People ex rel. Musso v. Chicago, Burlington & Quincy Railroad Company*.¹¹⁶ This case was a consolidation, for hearing, of some forty-six appeals from the Circuit Court of Madison County. The county collector had made application for judgment for taxes paid under protest by twelve

¹¹³ *Id.* at 564-65, 209 N.E.2d at 654-55.

¹¹⁴ *Id.* at 556, 209 N.E.2d at 650.

¹¹⁵ 37 Ill.2d 158, 226 N.E.2d 265 (1967).

¹¹⁶ 33 Ill.2d 88, 210 N.E.2d 196 (1965).

taxpayer railroads for the years 1957 to 1962, inclusive. The taxpayer railroads filed objections contending that their property was assessed at full value while the equalized value, for tax purposes, of locally assessed property did not exceed 55 per cent of full, fair cash value in any of the years involved, and that the resulting discrimination against them was so gross as to be constructively fraudulent.

The trial court found that locally assessed property, after application of the multiplier certified by the Department of Revenue, had been assessed at from 48.14 per cent to 51.40 per cent of full, fair cash value, that the properties of the railroad taxpayers were likewise underassessed at from 58 to 85 per cent of full value, and that the disparities were so great as to constitute gross discrimination against the taxpayer railroads. The refunds ordered by the trial court were not in dollar amounts but in percentages, and the parties were to make the computations. The measure of refund was the difference between the railroads' taxes and the taxes they would have paid if all property in the county had been assessed at full value. The amount of each such refund was limited by (a) the amount of the protest, and (b) the amount of any other refunds.

From these findings, the taxpayer railroads appealed, while the county collector neither appealed, nor cross-appealed. Accordingly, as in the first *Korzen* case, there was no dispute on appeal as to whether locally assessed property had been valued, for tax purposes, at substantially less than its full value. The only issue before the supreme court was whether the railroads' properties had been assessed at full, fair cash value for the years in question. The supreme court reversed, and remanded with directions to order refunds in conformity with the method outlined in the *Hillison* and *Kohorst* cases.

Two aspects of the Railroad Cases are of particular interest. One is the collapse of the position taken initially by the taxing authorities with regard to the prevailing level of assessment for locally assessed property. In *Hillison*, *Kohorst*, and *Wenzel*, the several county collectors vigorously disputed the contention of the taxpayer railroads that locally assessed property had been valued, for tax purposes, at substantially less than its full, fair cash value. Next, the *Enrietta* case reflected a substantial shift in position. The county authorities continued to challenge the evidence by which the taxpayer sought to establish that locally assessed property, even after application of the multiplier certified by the Department of Revenue, was assessed at 50 per cent or less of its actual value. On the other hand, the authorities also contended alternatively that the property of the taxpayer railroad was itself assessed at less than its full value. Finally,

in *Korzen* and *Musso*, the taxing districts abandoned completely their initial legal position. No longer did they deny that locally assessed property was valued at substantially less than full value for tax purposes. Instead, their sole contention on appeal was that the Department had failed to value the property of the taxpayer railroads at 100 per cent of its actual value.

It was noted previously that the *Callahan* decision had left the railroad industry with what appeared to be an almost insuperable burden of proof, *i.e.* to establish to the satisfaction of the courts, that locally assessed property was in fact assessed at but one-half of its actual value. At the conclusion of these cases, the railroads of the state had succeeded so well in this task that the proposition was no longer even contested by the local taxing authorities.

The other aspect of the Railroad Cases which is of particular interest, concerns the proof by which the railroad taxpayers accomplished this result. In *Hullison* and *Kohorst*, the initial Railroad Cases, the taxpayers adduced rather diverse evidence to demonstrate that the ratio between the assessed value of locally assessed property and the full, fair cash value of such property, fell considerably short of 100 per cent. In this connection, the railroads relied not only upon the studies and data of the Department of Revenue, but also upon independent appraisal reports and material produced by the United States Bureau of Census.

The *Wenzel* and *Enrietta* opinions indicate, however, that the railroad taxpayers were by then able to rely upon the sales-assessment ratio studies of the Department of Revenue, supported by expert testimony regarding the general acceptability and significance of such material. In this connection the following passage from the court's opinion in the first *Korzen* case is of interest as an indication of the court's acceptance, for purposes of proof, of such statistical evidence:

Assuming, *arguendo*, that the data taken from Interstate Commerce Commission reports is admissible for any purpose, it cannot be used as an assessment ratio study, as is done with locally assessed property. The purpose of such a study is to establish a level as assessment, not the ratio of particular property not sold. It is a statistical technique of so sampling sales that a series of eligible transactions can provide a frequency distribution pattern which will provide a median representative of the level of assessment of a given class of property. Some of the principal tests which must be met, according to the experts, are grading property into comparable classes, sufficient transactions to produce a weighted average that will reflect accuracy, sales must be at arms length, condemnation sales are eliminated and intercorporate transfers are left out.¹¹⁷

In brief, it would appear that the assessments-sales ratio studies of the Department of Revenue, duly supplemented by ex-

¹¹⁷ 82 Ill.2d 554, 561-62, 209 N.E.2d 644, 653 (1965).

pert testimony regarding their significance and reliability, as in the *Wenzel* and *Enrietta* cases, are now determinative as to the prevailing level of assessment in a given county for a given year. As the court concluded in *Enrietta*, "the assessments-sales ratio studies were admissible and establish the ratio between the full, fair cash value and the assessed value."¹¹⁸

The "Railroad Cases" — Implications for Cook County

In considering the potential effect of the Railroad Cases upon the taxation of real property in Cook County, it is necessary, first, to distinguish between what those cases established, and what they did not establish. Of the substantive legal propositions established, or reestablished, by those decisions, the most important is easily overlooked — perhaps because it is so obvious. The Railroad Cases reaffirmed, as to real property, the simple and basic proposition that section 1 of the Revenue Article means what it says: "[A]ll property is to be taxed uniformly, in proportion to its value." There is no little irony in the observation that able contemporary counsel for the Burlington and North Western Railroads, after years of effort, accomplished no more, in the *Hillison*, *Wenzel*, *Korzen* and *Musso* cases, with regard to the respective tax burdens of railroad and other property, than had their predecessors of a century ago. Thus, in *Bureau County v. Chicago, Burlington & Quincy Railroad Company*,¹¹⁹ an 1867 case, the railroad had scheduled its property at the same proportion of its fair market value as was used in assessing property generally throughout the county. Nonetheless, the board of supervisors of the county increased the railroad's assessment by 40 per cent. In holding that such actions violated the constitutional guaranty of uniformity of taxation and rendered the increase in assessment void, the court said:

The question is before us in all its length and breadth: Can a railroad company, by any action of the corporate authorities of a county, be required to pay more than its fair share of taxes as compared with those paid by individuals? Does the power exist anywhere to destroy the cardinal principle of uniformity of taxation so forcibly and prominently insisted upon by the Constitution? This is a great question, affecting, not only railroad corporations, but every property owner and taxpayer in the State.

It seems to us there is something so monstrous in the proposition as to be indefensible by fair argument.

Regarding uniformity as the vital principle, the dominant idea of the Constitution, where can the power reside to produce its opposite? Where is the power lodged, in view of this principle, to compel A to pay, on his land or personal property, of no more value than the same kind of property belonging to B, forty per cent more taxes than are assessed against B? We affirm such a power nowhere exists, and if it did it would be so revolting in its exercise

¹¹⁸ 29 Ill.2d 605, 610, 195 N.E.2d 174, 177 (1964).

¹¹⁹ 44 Ill. 229 (1867).

to the lowest sense of justice with which our species is imbued as to justify any and every lawful expedient for relief against it.¹²⁰

Another 1867 case, similarly reminiscent of the Railroad Cases of the 1960's is *Chicago & North Western Railway Company v. Boone County*.¹²¹

Moreover, the supreme court, in reaffirming and applying the uniformity requirement of the Revenue Article, confounded a good deal of skeptical opinion. There is little question but that the railroads of the state had long borne an unduly large share of the local tax burden, and that such disproportionate taxation of railroad property had become something of a "way of life" for numerous counties and other taxing districts. The application of the principles of the Railroad Cases compelled painful fiscal readjustments for many such districts, and their "local" or resident, taxpayers.¹²² In addition, the long drawn out litigation, by "freezing" significant portions of the tax levies for successive years, created budgetary problems for numerous other districts, which were perhaps not otherwise greatly concerned about the precise share of the local tax burden which might be borne by the railroads.¹²³

Notwithstanding such practical, fiscal inconveniences resulting from its decisions, the court persevered, over a period of several years, in the application of the propositions established by the first two of the Railroad Cases — *Hillison* and *Kohorst*. Conversely, however, it might be noted that the Railroad Cases, as they evolved, under the court's procedural guidance, entailed no spectacular decisions by the court. They entailed, instead, a great mass of complex and prolonged litigation. There were no less than seven Railroad Cases decided by the court. One of these, *Musso*, was itself a consolidation, for hearing, of appeals in some forty-six separate lawsuits and, as with other of the Railroad Cases, there were a substantial number of additional lawsuits

¹²⁰ *Id.* at 238.

¹²¹ 44 Ill. 240 (1867).

¹²² See Parham, *Taxation of Property in Illinois*, 1961 U. ILL. L. F. 645:

The strict enforcement of the present laws as contemplated by the Court would accomplish the desired uniformity, but the political pressures which have brought about these discriminatory assessment practices will no doubt continue to thwart efforts to achieve this ideal. So long as this stalemate exists, the taxes paid under protest continue to mount and the taxing districts are harassed by financial uncertainty. *Id.* at 651.

¹²³ Chicago Sun-Times, July 24, 1965, at 36, col. 1:

Cook County Treasurer Bernard M. Korzen said Friday the County had refunded the Burlington Route \$324,989 in property taxes paid under protest in 1957.

The payment was the first in an expected series of refunds to railroads that may total \$40,000,000.

Korzen said the initial payment was made from a reserve fund of \$34,000,000 set aside to meet the claims.

Other local taxing bodies have kept in reserve railroad taxes paid under protest since 1959.

which were, by agreement, dependent upon the outcome of the case before the court. In brief, the supreme court proved itself capable of fiscal revolution, provided it be accomplished in a prosaic and legally becoming manner.

The Railroad Cases afford some basis, therefore, for the hope that the supreme court might undermine, or render inoperative, the Cook County system of de facto classification of real property for purposes of taxation, notwithstanding the practical consequences of such action by the court. However, if Cook County's de facto system is to be doomed by the court, it will probably, like disproportionate taxation of railroad property, die a lingering judicial death.

In any event, the supreme court has taken care to demonstrate that the propositions of law established, and the relief granted to the taxpayers in the Railroad Cases, are not peculiar to an industry but extend to taxpayers generally. Thus, in *People ex rel. Nordlund v. S.B.A. Company*,¹²⁴ the supreme court said:

We are also unconvinced by the taxpayer's argument that the ordinary taxpayer is discriminated against in favor of railroads. While review of the Department of Revenue's administrative assessment of railroad property is subject to the provisions of the Administrative Review Act, . . . the scope of the inquiry available to the railroad is no greater than that available to other taxpayers in a hearing on objections. In both situations we believe that the taxpayer is limited to a judicial inquiry as to whether the assessment is actually or constructively fraudulent.¹²⁵

In *People ex rel. County Collector of St. Clare County v. American Refrigerator Transit Company*,¹²⁶ the court followed the *Hillison* and *Kohorst* cases in directing the computation of the refund to which a taxpayer, aggrieved by a constructively fraudulent overassessment of its property, was entitled.

In the *American Refrigerator* case the court also drastically lowered the degree of overassessment necessary to warrant an inference of constructive fraud. It had been generally assumed, prior to the Railroad Cases, that to constitute proof of constructive fraud, an overassessment would have to be from three to four times as great, in proportion to the value of the property assessed, as the prevailing level of assessment. Thus, in Cook County, where the prevailing level of assessment is about 50 per cent, it would be necessary for property to be assessed at from 150 to 200 per cent of its actual value before the owner would be able, solely on the basis of such assessment, to obtain judicial relief. Certain language in the first three Railroad Cases indicated that this requirement might have been lowered to about

¹²⁴ 34 Ill.2d 373, 215 N.E.2d 233 (1966).

¹²⁵ *Id.* at 376-77, 215 N.E.2d at 235.

¹²⁶ 33 Ill.2d 501, 211 N.E.2d 694 (1965).

80 per cent.¹²⁷ The court, in the *American Refrigerator* case, held, as a matter of law, that an overassessment of 78 per cent or more constitutes constructive fraud.¹²⁸ Thus, for example, if the prevailing level of assessment is 50 per cent, any assessment in excess of 89 per cent of actual value is vulnerable to judicial attack, on the ground of constructive fraud.¹²⁹

However it is doubtful whether the "spread" under the Cook County system of classification is sufficiently great, as between the prevailing level of assessment for real property generally, and the percentage of actual value used in the assessment of the higher taxed classes of real property, to permit a trial court to invoke very often the percentage test for constructive fraud, as established by the *American Refrigerator* case.

And in the *S.B.A.* case, which involved a difference of approximately 25 per cent between the assessor's valuation of certain property, and the value placed upon it by the taxpayer's appraiser, the court specifically declined to establish a precise, mathematical definition of constructive fraud:

The taxpayer urges this court to define the concept of constructive fraud on the basis of a grossly excessive assessment. Unfortunately this concept, as other legal concepts, is not susceptible to precise definition. Our system of jurisprudence requires that these inexact criteria be dealt with on a case-to-case basis. It is fundamental, however, that it is not the function of the judiciary to act as a super board of review, but only to protect the public from fraudulent discriminatory taxation and clear abuse of administrative authority. We can only say that the record in this case, showing no discrimination or failure to honestly perform administrative

¹²⁷ *People ex rel. Dallas v. Chicago, Burlington & Quincy R.R.*, 26 Ill. 2d 292, 186 N.E.2d 335 (1962). The court said:

We have recently held that an undervaluation may be so gross as to indicate it was not honestly made but was known to be deficient, and where it appears that the Department assesses a railroad's property at 100% of its full value, the assignment of a multiplier to the county which results in the assessment of other property at 55 per cent or less of full value amounts to a constructively fraudulent discrimination. (*People ex rel. Kohorst v. Gulf, Mobile and Ohio Railroad Co.*, 22 Ill.2d 104; *People ex rel. Hillison v. Chicago, Burlington and Quincy Railroad Co.*, 22 Ill.2d 88.) [100% - 55% = 45%; 45%/55% = 81.8%].
Id. at 293-94, 186 N.E. at 336.

¹²⁸ 33 Ill.2d 501, 504-05, 211 N.E.2d 694, 697 (1965).

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 appellee's property, after application of the multiplier, was assessed at \$158,500 and that its actual fair market value was \$161,000. 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%].

¹²⁹ 50% × 78% = 39%; 50% + 39% = 89%.

functions, does not justify interference with the proper assessing authorities.¹³⁰

The court thus reaffirmed its traditional rule of judicial self-restraint in the review of real property assessments. Specifically, it reiterated the proposition that the courts are not to serve as "super boards of review" nor are they to intervene solely to rectify a "mere difference of opinion as to value between the assessing officers and the court."¹³¹ That is to say, the courts are not to decide, or perhaps more accurately, to arbitrate, disputes between experts as to the precise value of specific parcels of property.

In effect, the court has rejected an opportunity to attack de facto classification by way of a step-by-step lowering of the percentage of overassessment that would constitute constructive fraud as a matter of law. Such probably would have engulfed the courts in a large number of cases, which cases would have intermixed judicial review of the classification practice of the county assessor with issues concerned solely with the correctness of his valuation of individual parcels of property.

Instead, the court has intimated, in its decisions subsequent to the Railroad Cases, that it prefers to review assessments on the basis of a challenge which goes to the pattern, or system of assessment followed by responsible administrative officials, rather than to consider an attack upon a specific assessment result reached by those officials.¹³² The most important legal development associated with the Railroad Cases involves what is technically a matter not of substantive, but of adjective, or procedural law, *i.e.*, the pattern of evidence to be adduced by the railroad taxpayers and accepted by the court, to prove the prevailing level of assessment of locally assessed property in a specific county, for a given year.

In a sense, this development reflects a merger of modern

¹³⁰ 34 Ill.2d 373, 378, 215 N.E.2d 233, 236 (1966).

¹³¹ *People ex rel. Frantz v. M.D.B.K.W., Inc.*, 36 Ill.2d 209, 211, 221 N.E.2d 650, 652 (1966).

¹³² *People ex rel. Nordlund v. S.B.A. Co.*, 34 Ill.2d 373, N.E.2d 233 (1966):

There is no evidence in this record of actual fraud or malfeasance, nor is there evidence that the assessment was made in disregard of recognized elements of value, or in violation of any accepted standards or regulations. The most that can be said is that the record discloses an honest difference of opinion between one appraiser and the assessing authorities. This is made evident by the compromise judgment of the trial court.

Id. at 378, 215 N.E.2d at 236.

People ex rel. Frantz v. M.D.B.K.W., Inc., 36 Ill.2d 209, 221 N.E.2d 650 (1966):

Before the conduct of the taxing authorities will be considered constructive fraud, the evidence must clearly establish that the assessment was made in ignorance of the value of the property, or on a judgment not based upon readily ascertainable facts, or on a designedly excessive basis.

Id. at 211, 221 N.E.2d at 652.

statistical technique¹³³ with the mass of information, regarding real property assessments and transactions in the several counties of Illinois, which the Department of Revenue has accumulated and processed during the last twenty years.

The Revenue Act, as amended by the Butler Bills of 1945, has imposed upon the Department the duty of making all necessary studies of assessments and of property values as will enable the Department to ascertain and determine annually, the percentage relationship, for each county, between the value at which property has been assessed by the local authorities and the full, fair cash value of such property.¹³⁴ The procedure followed by the Department in determining this percentage each year for the 101 counties, other than Cook County, is set forth in the *Kohorst* and *Wenzel* opinions of the court.¹³⁵

The procedure followed by the Department for Cook County is essentially the same, and entails the following steps.¹³⁶

1. The Department of Revenue procures copies of all deeds recorded in the Office of the Recorder of Deeds of Cook County.
2. The Department then eliminates from consideration all deeds which do not appear to have been the result of an "arm's length" transaction, such as those between members of a family, or between parent and subsidiary corporations.
3. The Department then determines, on the basis of the federal documentary stamps affixed to each deed, the indicated actual consideration for the property transferred by such deed.
4. On the basis of such indicated actual consideration, the Department then selects the following deeds for tabulation:
 - a. For the months of April and October, deeds where the indicated actual consideration was \$2,000, or more.
 - b. For the ten months other than April and October, deeds where the indicated actual consideration was \$20,000, or more.

The deeds so selected for tabulation will number, in any

¹³³ See NATIONAL ASSOCIATION OF TAX ADMINISTRATORS, GUIDE FOR SALES ASSESSMENTS, RATIO STUDIES, 1-2, 20-28, 54-56, 56-60 (1954).

¹³⁴ ILL. REV. STAT. ch. 120, §627 (1965); see *Anderson v. City of Park Ridge*, 396 Ill. 235, 246, 72 N.E.2d 210, 215-16 (1947); *Troupis, Full Fair Value Assessment in Illinois*, 44 ILL. L. REV. 160, 169-80 (1949).

¹³⁵ *People ex rel. Kohorst v. Gulf, Mobile & Ohio R.R.*, 22 Ill.2d 104, 109-10, 174 N.E.2d 182, 186 (1961); *People ex rel. Wenzel v. Chicago & North Western Ry.*, 28 Ill.2d 205, 209-10, 190 N.E.2d 780, 782-83 (1963).

¹³⁶ See *Gale, Assessment and Collection of Taxes*, 1952 U. ILL. L. F. 192, 203-04; ILLINOIS DEPARTMENT OF REVENUE, PROPERTY TAX STATISTICS — 1965, 131-32, 134-35 (1967).

- given year, between 13,000 and 15,000.
5. The Department then ascertains, from the records of the County Assessor of Cook County, the assessed value of the property conveyed by each deed under consideration. Such assessed value, of course, would be the assessed value before application of the Department's multiplier.
 6. The Department also ascertains, from the records of the county assessor, the "class" in which such property has been placed by the assessor for assessment purposes. Under the present *de facto* system of classification of real property for purposes of taxation, the county assessor has established some 37 classes of real property. These 37 classes have been combined in turn, by the Department into 17 "class groups."¹³⁷ The deeds selected for tabulation are then divided among these "class groups," in accordance with the class designation which has been given by the county assessor to the property conveyed.
 7. The data so selected by the Department is then tabulated, first by class groups, and then for the county as a whole, to determine the prevailing level of assessment in Cook County.

The Department's procedure for Cook County, and that followed by it for the other 101 counties, appear to differ solely in the following respects:

1. For the 101 counties other than Cook County, the Department tabulates selected deeds on the basis that there are two classes of real property in each county: rural real estate and urban real estate.¹³⁸ The Department, in each

¹³⁷ The more important of the 17 "class groups," so employed by the Department of Revenue in its analysis of Cook County assessments and the corresponding assessor's class or classes encompassed in each group are as follows:

<i>Group</i>	<i>Type of Improvement</i>	<i>Cook County Assessor's Classification</i>
I	Cottages and bungalows	3
II	Split levels, 1 and 2-story modern residences, modern row houses	34, 4, 7, 8, 9, 7, 8, 95, 96
III	Old style residences	5, 6, 10
IV	Old style 2-story, 2-flat and 4-flat	11
V	Modern apartments, not over 6-flat	12, 13, 14
VIII	Modern stores, offices and apartment buildings	20, 21
XIV	Factories, warehouses, quonset buildings, other industrial buildings	33, 93
XV	Department stores, large offices, mercantile and loft buildings and public garages	91

¹³⁸ However, in the case of those downstate townships and municipalities where there are "sufficient usable transfers," separate township and city sales-assessment ratios are also prepared. ILLINOIS DEPARTMENT OF REVENUE PROPERTY TAX STATISTICS — 1965, 132 (1967).

of these counties, first ascertains separate sales-assessment ratios for urban and for rural property. A weighted average of these two ratios is then computed, which average is the prevailing level of assessment for the county as a whole. The "weighting" of the average reflects, of course, the respective aggregate values of urban and rural real property in such county.¹³⁹

2. For Cook County, the Department tabulates on the basis of the 17 "class groups" referred to above. A separate sales-assessment ratio is first determined for each class group. A weighted averaging of these 17 ratios in turn produces the prevailing level of assessment for Cook County as a whole. There are also six other prevailing levels of assessment for Cook County, one for each of four assessment districts into which Cook County is divided, one for the city of Chicago, and one for the county townships (that is to say, the portion of Cook County lying outside the city of Chicago).¹⁴⁰

Armed with the opinions of the supreme court in the Railroad Cases, particularly the *Enrietta* and *Wenzel* decisions, and the materials now known to exist in the records of the Department of Revenue, a Cook County taxpayer, who considers himself aggrieved by the operation of the de facto system of classification, and who chooses to challenge the assessment of his property pursuant to that system, should be able to establish in a court proceeding, the following:

1. That the prevailing level of assessment in Cook County, even after application of the multiplier certified by the Department of Revenue, does not exceed 50 per cent of the actual value of all real property. Indeed, in view of the position taken by the county authorities in the *Korzen* cases, it is very likely that they would not even contest this proposition.
2. That for purposes of administering his office, the county assessor has grouped real property into some 36 classes, and that the Department of Revenue, for its own operations, has combined these classes into some 17 class groups. It should also be possible to establish, for each class and class group, the type or types of property included therein, and to ascertain the class and class group

¹³⁹ *E.g.*, *People ex rel. Wenzel v. Chicago & North Western Ry.*, 28 Ill.2d 205, 210, 190 N.E.2d 780, 783 (1963); see ILLINOIS DEPARTMENT OF REVENUE, PROPERTY TAX STATISTICS — 1965, 132 (1967); Weil, *Property Tax Equalization in Illinois*, 6 NAT'L TAX J. 157, 159 (1953).

¹⁴⁰ ILLINOIS DEPARTMENT OF REVENUE, PROPERTY TAX STATISTICS — 1965, 131-32, 134-35 (1967).

to which the property of the objecting taxpayer was assigned.

3. That the prevailing level of assessment in Cook County for each of the Department's class groups has been a certain specific percentage of the actual value of real property included in such groups. It should also be possible, similarly, to establish the prevailing level of assessment in Cook County for each of the assessor's classes.¹⁴¹
4. That the prevailing levels of assessment for property included in several of the Department's class groups, and in several of the assessor's classes including the class group and class encompassing the property of the objecting taxpayers, exceed, by a very wide margin, the prevailing level of assessment for Cook County real property generally. In all likelihood, it could also be shown that such disparity between the prevailing levels of assessment for those classes and class groups, on the one hand, and the prevailing level of assessment for real property generally, on the other, had existed for each of the last ten or fifteen years.
5. That the prevailing level of assessment for the class encompassing the property of the objecting taxpayer was a certain specific percentage of the full, fair cash value of property included in such class — which percentage, it will be assumed, was substantially in excess of 50 per cent.

The above propositions, duly established for purposes of a suit challenging a given tax assessment, would appear to constitute an adequate foundation for a finding of constructive fraud, entitling the objecting taxpayer to judicial relief.

The court would find it difficult, indeed, to escape the inference that the assessor, in fixing excessive valuations for property in the class or classes in question, had acted deliberately and intentionally. It is one thing to characterize a given overassessment, or even a group of overassessments, as a mere "honest error of judgment" on the part of the assessing officials. It is quite a different matter to explain such overvaluations where they extend to an entire class of property, and have been repeated year after year, for a generation or more.

¹⁴¹ For recent years, the Department would have retained the data cards from which it had prepared its ratio studies on a class group basis; these cards would contain the information needed to make similar ratio studies on an assessor's class basis. It is uncertain for earlier years, for which the data cards are no longer available, whether the Department's records would permit a breakdown of its class group ratio studies into ratio studies of the compound assessor's classes.

A leading case on point is *Aldrich v. Harding*¹⁴² There the plaintiff had brought suit to enjoin the collection of taxes for 1927 on certain real estate in Cook County. Involved was a primitive version of the present Cook County de facto system of classification. A demurrer to the bill having been overruled, the collector elected to stand by it, and a decree was entered granting the relief prayed for by the plaintiff. The collector appealed, and the supreme court affirmed. Said the court, in part:

The 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 of 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.

. . . . 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.

. . . . In 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.¹⁴³

It is a well established rule in Illinois that an intentional violation by the assessing authorities, of the constitutional requirement of uniformity, renders an assessment invalid, and entitles the taxpayer aggrieved thereby to judicial relief. Thus, in *People ex rel. McCallister v. Keokuck and Hamilton Bridge Company*,¹⁴⁴ the court ruled as follows:

There was a legal objection to the amount of the tax, which the appellant had a right to prove. . . . That objection was that the property was arbitrarily, knowingly and fraudulently assessed at its full market or cash value while all other property was arbitrarily and knowingly assessed at about forty per cent of such value in accordance with an established rule and long custom for assessing property. Section 1 of article 9 of the constitution requires taxation of property in proportion to value and authorizes the General Assembly to 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 is to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and any error in the exercise of honest judgment will not invalidate a tax, but an arbitrary, known and intentional violation of the rule of uniformity

¹⁴² 340 Ill. 354, 172 N.E. 772 (1932).

¹⁴³ *Id.* at 358-60, 172 N.E. at 774-75.

¹⁴⁴ 287 Ill. 246, 122 N.E. 467 (1919).

is an invasion of constitutional right and will not be tolerated. It is sufficient for an objector to show such willful and intentional violation of the constitutional provision, and where an assessment shows a very great disparity and discrimination which could not reasonably have arisen from an error of judgment, the courts will give relief.¹⁴⁵

Similarly, in *People ex rel. McDonough v. Schmuhl*:¹⁴⁶

A tax will not be invalidated because of an error in the exercise of honest judgment by the assessing bodies, but if the tax is the result of an arbitrary, intentional violation of the rule of uniformity the action of the taxing body constitutes an invasion of constitutional right and the tax cannot be upheld.¹⁴⁷

And in *People ex rel. Miller v. Chicago, Burlington & Quincy Railroad Company*:¹⁴⁸

While it is true that error in the exercise of an honest judgment in fixing the value of property will not invalidate the tax, it is also true that an arbitrary violation of the rule of uniformity is an invasion of constitutional right and will not be tolerated. . . .¹⁴⁹

Also applicable is the proposition that the assessment of property under circumstances which indicate either a lack of knowledge of property values on the part of the assessor, or a deliberate fixing of assessments contrary to such values, will warrant an inference of fraud and the intervention of the courts. Thus, in *People ex rel. McGaughey v. Wilson*,¹⁵⁰ the court held as follows:

It has also been repeatedly held, by this and other courts, that where the circumstances show the property to have been grossly over-valued and the assessed valuation is reached under circumstances showing either lack of knowledge of values on the part of the assessor making the assessment, or a deliberate and knowing fixing of values contrary to the known value, fraud in law, will be inferred, and the court will protect the rights of the tax-payer.¹⁵¹

And in *People ex rel. Nordlund v. Lans*:¹⁵²

The rule has become firmly established, however, that where the evidence shows property to have been grossly overvalued, and the assessed valuation is reached under circumstances showing either lack of knowledge of known values or a deliberate fixing of values contrary to the known value, fraud in law will be inferred and relief will be given to the taxpayer.¹⁵³

It should be noted, moreover, that the basic legal theory of the objecting taxpayer would be that his property had been deliberately assessed at a percentage of actual value markedly higher than that used in the assessment of real property generally. Such a showing would not only bring him within a long line of cases, in addition to those cited above, which have declared such an

¹⁴⁵ *Id.* at 249-50, 122 N.E. at 468-69.

¹⁴⁶ 359 Ill. 446, 194 N.E. 731 (1935).

¹⁴⁷ *Id.* at 449, 194 N.E. at 733.

¹⁴⁸ 300 Ill. 399, 133 N.E. 325 (1921).

¹⁴⁹ *Id.* at 404-05, 133 N.E. at 327.

¹⁵⁰ 367 Ill. 494, 12 N.E.2d 5 (1937).

¹⁵¹ *Id.* at 497, 12 N.E.2d at 6-7.

¹⁵² 31 Ill.2d 477, 202 N.E.2d 543 (1964).

¹⁵³ *Id.* at 479, 202 N.E.2d at 544-45.

overassessment to be constructively fraudulent,¹⁵⁴ but it would also place him safely without the troublesome line of authorities which have held that the underassessment, or nonassessment, of other property, or classes of property, affords a taxpayer no ground for judicial relief.¹⁵⁵

Indeed, the owners of property included in such an over-assessed class may well find it easier to establish their prima facie right to relief, as members of the class, than to prove the exact quantum of recovery to which they are entitled individually. An example will serve to illustrate this problem.

On the basis of such data as has been published, it would appear that at least two major categories of Cook County real property are heavily overassessed. They are the Department's group XIV — factories, warehouses, and other industrial buildings; and its group XV — large office buildings, department store buildings, and like mercantile properties. The prevailing level of assessment for each group certainly exceeds 75 per cent of the actual value of the property encompassed by the group, and may well be closer to 100 per cent.¹⁵⁶

Assume, then, that the prevailing level of assessment for real property included in group XV is not less than 75 per cent of its actual value, and that, as indicated above, the prevailing level of assessment for all Cook County real property is no more than 50 per cent. The owners of real property encompassed by group XV — which group includes but a single assessor's class, No. 91 — can probably contend, successfully, on the basis of the authorities cited, that the assessments of their properties are so grossly discriminatory as to be constructively fraudulent. The aggregate recovery to which such owners would be entitled — under the *Hillison*, *Kohorst* and *American Refrigerator* cases — is also plain. As a class, they would be entitled to recover the difference between the taxes in fact levied upon their property, and the taxes which would have been so levied had all real property in Cook County been assessed at 75 per cent of its actual value. To approximate, such tax refunds, for the class as a whole, would

¹⁵⁴ *E.g.*, *People ex rel. McDonough v. Grand Trunk Western R.R.*, 357 Ill. 493, 497-98, 192 N.E. 645, 647 (1934); *People ex rel. Tedrick v. Allied Oil Corp.*, 388 Ill. 219, 222, 57 N.E.2d 859, 861 (1941).

¹⁵⁵ *E.g.*, *Bistor v. McDonough*, 348 Ill. 624, 634, 181 N.E. 417, 421, *cert. denied*, 287 U.S. 641 (1932); *Tuttle v. Bell*, 377 Ill. 510, 514-15, 37 N.E.2d 180, 182, *cert. denied*, 315 U.S. 815 (1941).

¹⁵⁶ See ILLINOIS DEPARTMENT OF REVENUE, PROPERTY TAX STATISTICS — 1965, 134 (1967). The median pre-evaluation sales-assessment ratio for all Cook County real property is given at 26, that shown for group XIV is 50 and for group XV the figure is 52. As indicated by the *Korzen* case, it appears to be generally accepted that the prevailing level of assessment in Cook County, after equalization, is about 50 per cent, or about twice the equalization sales-assessment ratio for all real property.

aggregate about one-third of the taxes originally levied.¹⁵⁷

The difficulty, however, would be to determine the exact refund which the owner of each specific parcel of real property, included in such group, would be entitled to receive. In the Railroad Cases, the taxpayers were able to proceed on the theory that each one of them was assessed at the same percentage of actual value — 100 per cent. As a result, in any given county the percentage of recovery was the same for all of the railroads owning property in that county. In the case of non-railroad real property, there would be no such uniformity, even as to property included in the same class, or class group.

As to any class or class group, the prevailing level of assessment, determined pursuant to the Department of Revenue's sales-assessment ratio studies, is actually a median figure.¹⁵⁸ It assumes, therefore, that some properties probably are assessed at a percentage of actual value greater than the prevailing level of assessment, and that other properties are assessed at a percentage of actual value less than that level. And, of course, a taxpayer's recovery would vary greatly, depending upon whether his property was assessed at a percentage of actual value markedly less or markedly greater than the prevailing level of assessment for the class as a whole. Generally, if a taxpayer's property was assessed at 75 per cent of its actual value, he might expect a refund of one-third of the original levy; if it were assessed at 60 per cent, a refund of one-sixth; and if it were assessed at 100 per cent, a refund of one-half.

Consequently, in suits challenging assessments under the present Cook County de facto classification system, there will be present a variable factor which the taxing authorities sought, unsuccessfully, in *Korzen* and *Musso*, to interject into the Railroad Cases: the respective percentages of actual value at which the properties of different objecting taxpayers are assessed. Even though all such properties might have been included in one assessor's class, and even though it might already have been established that the assessments of properties in such class, considered in the aggregate, were constructively fraudulent, each objecting taxpayer would have his own case to prove — based on

¹⁵⁷ Assume aggregate assessments of \$100,000,000; and aggregate actual value of real property assessed of \$200,000,000; and a tax rate of 5 per cent to yield \$5,000,000. Assume also that group XV property has an aggregate actual value of \$40,000,000, an aggregate assessed value of \$30,000,000 and is subject to an annual tax levy of \$1,500,000. If all real property were to be assessed at 75 per cent, aggregate assessments would increase to \$150,000,000 — with those of group XV remaining at \$30,000,000. The tax rate, to raise \$5,000,000, will fall from 5 per cent to 3½ per cent; and the tax levied on group XV property will be \$1,000,000 — or a reduction of one-third from the previous levy of \$1,500,000.

¹⁵⁸ *People ex rel. Korzen v. Chicago, Burlington & Quincy R.R.*, 32 Ill. 2d 554, 561-62, 209 N.E.2d 649, 653 (1965).

the specific percentage of actual value at which his property had in fact been assessed — in order to obtain a tax refund.

As a result, litigation challenging the de facto system in Cook County will be no less complex than the Railroad Cases, and probably a good deal more intricate. However, it seems safe to assume, that in view of the vast amounts potentially recoverable, such litigation will be commenced, and pressed vigorously. It also appears reasonable to forecast, in view of the implications of the holdings by the supreme court in the Railroad Cases, that such litigation will achieve considerable success over the next several years. And, of course, to the extent that such litigation is successful, the operation of the de facto system will be circumscribed, and possibly rendered unworkable.

Conversely, it would appear prudent to assume, that in the near future there will be no spectacular court decision declaring the entire de facto system to be illegal, and ordering a reassessment of all Cook County real property on an unclassified basis.¹⁵⁹

An End to De Facto Classification — Certain Consequences

The consequences of a successful attack upon the present de facto system of classification of real property in Cook County fall into two main categories: the ultimate results which would allow the destruction of the system, and the intermediate consequences of litigation challenging such an important part of the local tax machinery.

Some of the practical consequences likely to follow from the destruction of the present system are clearly discernible, at least in their broad outlines, on the basis of available statistical information.¹⁶⁰ Assuming that the prevailing level of assessment, in Cook County, for all real property is about 50 per cent, the published data indicates that if de facto classification were to be ended, and each parcel of real property assessed at approximately the same percentage of its actual value, the increase in assessment, and tax, for the average owner of a single family house would be about one-third¹⁶¹ and that for many home owners the increase could be far greater.¹⁶²

¹⁵⁹ See Carey and Schulyer, *The Illinois Taxpayer's "Day in Court,"* 31 ILL. L. REV. 993, 1007 (1937).

¹⁶⁰ With regard to Cook County real property taxes for the year 1961, the average assessment ratio for single family houses was 37.7 per cent, the median assessment ratio for such houses was 37.2 per cent, and the coefficient of dispersion factor was 26.1 per cent. II CENSUS OF GOVERNMENTS 1962, 142, table 22.

¹⁶¹ See note 160 *supra*. $50.0\% - 37.7\% = 12.3\%$; $12.3\%/37.7\% = 32.6\%$.

¹⁶² One way to illustrate the practical results which might be expected to follow from abolition of the existing de facto classification systems, is to take, as an example, nine single family houses, and to assume that their respective assessment ratios are such that the median assessment ratio is 37.2

There is also this additional consideration: the adverse impact upon the financial position of local governments in Cook County, of extensive litigation challenging the present system.

The Railroad Cases established that the preferred method to employ, in attacking an existing assessment system, is for the taxpayer to pay, "under protest," that portion of the tax levy which he considers to be excessive, and then to follow the procedure prescribed in the case of taxes so paid.¹⁶³ Upon the application of the county collector for judgment for the "delinquent" taxes paid under protest, the taxpayer, by objections filed with the court, would raise, and litigate, his contention that the assessment of his property was so grossly discriminatory as to be constructively fraudulent.¹⁶⁴ From the vantage point of local governments, the taxes so paid "under protest" would be "frozen," and therefore unavailable until the conclusion of the litigation in which the taxpayer contested the validity of the assessment.¹⁶⁵

As increasingly large numbers of taxpayers came to realize that the present classification system is subject to successful legal attack, they would, of course, protect their interests by paying a substantial portion of their real estate taxes "under protest." Given that the prevailing level of assessment in Cook

per cent, and the coefficient of dispersion factor is 26.1 per cent. See II CENSUS OF GOVERNMENTS 1962, 13, 142.

House	Ratio of Assessment	Deviation
A	23.7%	- 13.5
B	24.0%	- 13.2
C	26.0%	- 11.2
D	32.0%	- 5.2
E	37.2% (median)	0.0
F	43.0%	+ 5.8
G	47.0%	+ 9.8
H	50.0%	+ 12.8
I	53.0%	+ 15.8
Total of Deviations		87.3
Average Deviation (87.3/9)		9.7
Coefficient of Dispersion (9.7/37.2)		0.261 or 26.1%

Assume now that it becomes necessary to assess each of these nine houses at 50.0 per cent of its actual value. The results, per house, would be as follows:

House	Old Ratio of Assessment	New Ratio of Assessment	Increase or Decrease
A	23.7%	50.0%	+ 110.9%
B	24.0%	50.0%	+ 108.2%
C	26.0%	50.0%	+ 92.3%
D	32.0%	50.0%	+ 56.3%
E	37.2%	50.0%	+ 34.4%
F	43.0%	50.0%	+ 16.3%
G	47.0%	50.0%	+ 6.4%
H	50.0%	50.0%	0.0%
I	53.0%	50.0%	- 5.6%

¹⁶³ People *ex rel.* Hillison v. Chicago, Burlington & Quincy R.R., 22 Ill. 2d 88, 91-96, 174 N.E.2d 175, 176-78 (1961); People *ex rel.* Kohorst v. Gulf, Mobile & Ohio R.R., 22 Ill.2d 104, 106-09, 174 N.E.2d 182, 184-85 (1961).

¹⁶⁴ Young, *Taxpayers' Remedies*, 1952 U. ILL. L. F. 248, 274-77.

¹⁶⁵ ILL. REV. STAT. ch. 120, §§675, 679, 781 (1965).

County is about 50 per cent of the actual value of real property generally, and that the prevailing level of assessment for commercial and industrial property is about 75 per cent of actual value, the owners of commercial and industrial property, as a group, would have good reason to pay about one-third of their taxes "under protest." If all owners of such property were to follow this procedure, about eleven per cent of real estate taxes in Cook County, and about thirteen per cent of all real estate taxes in Chicago, would be so paid.¹⁶⁶

As previously noted, litigation challenging the present classification system will be a prolonged and difficult matter, extending over a period of several years.¹⁶⁷ The cumulative effect of such "freezing" of tax revenues could easily produce a series of financial crises for local governments.¹⁶⁸

The Future of De Facto Classification — A Possible Solution

Considerable differences of opinion exist, and have long existed, as to whether real property should or should not be classified for purposes of taxation.¹⁶⁹ There probably will never be agreement on an answer to this question.¹⁷⁰ However, Cook County is now faced, not with a theoretical tax dilemma, but with a very serious practical problem.

The present de facto classification system has been in effect for several decades. Huge sums have been invested, over the years, in conscious or unconscious reliance upon it. To abolish it now would work a tremendous hardship for a great many taxpayers, and would also, for a period of years, seriously disrupt the finances of local government. Accordingly, in the early 1960's, as the Railroad Cases began to cast a pall over the continued prospects of the de facto system, considerable attention was given to the possibility of "legalizing" the present system. Such legitimization of the existing arrangement would entail, of course, an amendment to the Revenue Article of the state constitution. Thus, the question of classification of real property in Cook

¹⁶⁶ For the year 1961, commercial and industrial real property comprised about 33 per cent of the total of appraised real property for Cook County as a whole, and for the City of Chicago alone, about 40 per cent. See II CENSUS OF GOVERNMENTS 1962, 142, table 22. $33.0\%/3 = 11.0\%$; $40.0\%/3 = 13.3\%$.

¹⁶⁷ In the matter of the Railroad Cases, the "test case" for Cook County involved the objections of the Chicago, Burlington & Quincy R.R. to taxes paid by it, "under protest," for the year 1957. This litigation was not concluded until July, 1965.

¹⁶⁸ In the matter of the Railroad Cases, the "test case" for Cook County, that of the Burlington Route for the year 1957, involved the relatively slight sum of \$324,989. By the time this litigation was concluded, the case was part of a series of refund claims expected to aggregate some \$40,000,000. See Chicago Daily News, July 23, 1965, at 28, col. 4.

¹⁶⁹ See Cushman, *The Proposed Revision of Article IX of the Illinois Constitution*, 1952 U. ILL. L. F. 226, 240-41.

¹⁷⁰ See Chicago Sun-Times, March 21, 1965, at 56, col. 1.

County played an important part in the negotiations which took place from 1961 to 1965 regarding revision of that Article.

These negotiations produced general agreement on at least one basic proposition: that the status quo should be maintained with respect to the taxation of real property. The problem was how to achieve this overall objective, in view of the sharp differentiation which had come to exist, as to such taxation, between Cook County and the other counties of the state. To the extent there is de facto classification of real estate in the downstate counties, it differs greatly from that in effect in Cook County. The Cook County system favors residential property at the expense of commercial and industrial property, while in the downstate counties, the opposite is generally the rule.¹⁷¹

The solution finally reached was the following complex compromise, embodied in a proposed revision of the Revenue Article.¹⁷²

1. In the 101 downstate counties, all real estate was to constitute one class. This meant that there was to be no classification of real property, for purposes of taxation, in those counties; and any existing classification was to be abolished.
2. For Cook County, a modified "Grandfather Clause" was devised to preserve the status quo. The de facto classification system, as it existed on January 1, 1965, was to be continued, subject to these possible modifications:
 - a. The county assessor would have been empowered to change the various levels of assessment, provided that the "spread" between the percentage of actual value used in the assessment of the lowest taxed class, and the percentage used in assessing any other class, was no greater than that existing on January 1, 1965. As a practical matter, this meant that the assessor would have been able to decrease, but not to increase, the percentages of actual value used in the assessment of the more highly taxed classes of real property. Consequently, he could decrease, but not increase the class discriminations which now exist.
 - b. Somewhat similarly, the county assessor was to have been empowered to abolish classes of real property, and to create new ones, provided that no real property might have been assessed, by reason of any such change, at a higher percentage of actual value

¹⁷¹ See Fisher, *An Economist's Appraisal of the Illinois Tax System*, 1961 U. ILL. L. F. 543, 580-81.

¹⁷² H. J. Res. 71, II ILL. L. 3780-83 (1965).

than that at which it would have been assessed had no such change been made.

A cumbersome procedure, never intended to be operative, was also established for abolishing the classification of real property in Cook County.

Thus, classification under the present de facto system, subject only to the possibility of minor administrative modification of that system in the future, was to be made permanent. Provision was also made to protect the position of the railroads, as established in the Railroad Cases.

Finally, it was provided that any person, aggrieved by any of the provisions respecting the taxation of real property in Cook County, "would be entitled to appropriate relief at law or equity."¹⁷³

The above provisions regarding the assessment and taxation of Cook County real property comprised section 13 of the proposed Revenue Article submitted, as a proposition, to the voters of the state at the general election held on November 8, 1966. The proposed Article failed of adoption; it received a majority of the votes cast on the proposition, but not the two-thirds majority required.¹⁷⁴

No new proposal to amend the Revenue Article may be submitted to the voters prior to the general election of November, 1970, and any proposition, to be considered at that election, would have to be approved by the general assembly at its 1969 session.¹⁷⁵ The general assembly did initiate, at its 1967 session, the calling of a constitutional convention. The question whether to hold a convention will be submitted to the voters at the 1968 election. If the voters approve, a constitutional convention would be elected, and convened, late in 1969, or early in 1970.¹⁷⁶

Revision of the Revenue Article will be an important issue to be resolved by such a constitutional convention, if one be called, or if not, by the 1969 regular session of the general assembly. In either event, a crucial aspect of the problem will be the provisions regarding the assessment and taxation of real property in Cook County.

The real property provisions of the 1966 Revenue Article

¹⁷³ The purpose of this provision was to avoid, as to section 13 of the proposed Revenue Article, the restrictions on judicial review contained in section 1 of the present article.

¹⁷⁴ STATE OF ILLINOIS OFFICIAL VOTE 1966, 22-24 (compiled by Paul Powell, Secretary of State). The vote on the proposed Revenue Article was 1,642,542 "yes," and 1,434,330 "no." The total number of ballots cast at the election was 3,928,428. The "yes" vote fell 408,704 short of a two-thirds majority of those voting on the proposition, and 321,691 short of an absolute majority of those voting at the election.

¹⁷⁵ ILL. CONST. art. XIV, §2.

¹⁷⁶ *Id.* §1.

proposal were sharply criticized. Nonetheless, their essential features are likely to form a part of any revised article. Most of the objections centered on the marked differentiation which the proposed Article would have made, as between Cook County and the remainder of the state: for Cook County, a complex "Grandfather Clause" preserving the de facto classification as it existed on January 1, 1965; for the rest of the state, a simple provision that there should be no classification of real property for purposes of taxation. The objections raised both policy considerations and questions of federal constitutional law; a number of technical, legal objections were also directed at the form of the provisions in section 13.

The objections upon policy grounds may be briefly summarized. It was contended that if classification of real property were beneficial, it should be permitted everywhere in the state, not just in Cook County; and if not beneficial, then it should not be allowed anywhere, not even in Cook County.

The governing consideration with the general assembly, however, and a consideration likely still to be operative, was that there was no appreciable desire, anywhere in Illinois, for a change in the applicable system governing the taxation of real property nor was it feasible politically to make any such change. The real estate provisions of the proposed Article, in differentiating between Cook County and the rest of the state, did not constitute an innovation, although such was the initial impression conveyed. In fact, the proposed Article would have done no more than recognize, and legitimize, the differences and distinctions which were existent, and entrenched.

The "constitutional" objections to the proposed Article, simply stated, were that the division of the state into two parts, in one of which the classification of real property for purposes of taxation would be allowed, and, in the other part forbidden, would violate the "equal protection" and "due process" clauses of the fourteenth amendment of the Federal Constitution.

It should be noted at the outset that the taxes which would have been imposed upon real property, pursuant to the proposed Article, would have been local property taxes for the support of counties, cities, school districts, and the like. No state property tax has been levied for over thirty years; and the proposed Article, unlike the present one, contained no specific provision for one.¹⁷⁷ The basic question, therefore, applicable to all but a few taxing districts in the state, was whether a state constitution might lawfully provide for classification in one taxing district but not in others, it being assumed that within each taxing dis-

¹⁷⁷ ILL. CONST. art. IX, §1; H. J. Res. 71, II ILL. L. 3780-83 (1965); see Cohn, *Constitutional Limitations on Income Taxation in Illinois*, 1961 U. ILL. L. F. 586, 598.

strict the rule would be uniform; either there would be, or there would not be, classification of property in that district.

To this constitutional question, no definitive answer could be given, there being a marked dearth of authority. In support of the 1966 proposals, however, two somewhat unrelated arguments were advanced. One was the marked latitude which has been extended by the Supreme Court of the United States, in recent decades, to the states in matters of taxation.¹⁷⁸ The other was the practical consideration that if these proposals violate the fourteenth amendment of the United States Constitution, it would appear *a fortiori* that existing practices under the present Article do likewise. In brief, there exists a problem of federal constitutional law which must be faced, and resolved in any event.

CONCLUSION

The Illinois Constitution requires the uniform assessment and taxation of all real property. Cook County officials, notably the county assessor and the board of appeals, have ignored this requirement for many years. They have initiated and maintained, instead, a *de facto*-classification system under which different types, or classes of real property are assessed at widely varying percentages of their actual value. This system has operated to favor owner-occupied residential property at the expense of commercial and industrial real estate. The *de facto* classification system depends, for its continued existence, upon the inability of those aggrieved by its operation to obtain effective judicial relief. The so-called Railroad Cases indicate that such relief will now be forthcoming, although only through complex and prolonged litigation. The destruction of the *de facto* system, and the litigation necessary to accomplish that result, would have very drastic and disruptive consequences for Cook County taxpayers and for Cook County governments.

The *de facto* system can be preserved, and the consequences of such litigation avoided, if the system is legalized — that is to say, if the present *de facto* system is made a *de jure* one. However, such legitimatization of the present system will require revision of the Revenue Article of the Illinois Constitution. Such revision of the Revenue Article will be difficult. It will be necessary to reconcile long standing differences between Cook County and the remainder of the state, with regard to the assessment and taxation of real property. The most promising approach would be an Article which coupled a provision forbidding the classification of real property in the downstate counties, with a “Grandfather Clause” preserving the present Cook County *de facto* system of classification as it existed on a certain date.

¹⁷⁸ *E.g.*, Nashville, Chattanooga & St. Louis R.R. v. Browning, 310 U.S. 362, 368-69 (1940).