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**PROBLEMS OF FEDERAL-STATE-LOCAL
RELATIONS**

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HEARING
BEFORE THE
SUBCOMMITTEE ON INTERGOVERNMENTAL
RELATIONS

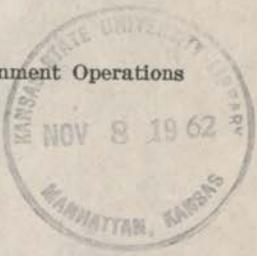
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE
EIGHTY-SEVENTH CONGRESS

SECOND SESSION

[PURSUANT TO SENATE RESOLUTION 359, 87TH CONGRESS]

SEPTEMBER 18, 1962

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PROBLEMS OF FEDERAL-STATE-LOCAL RELATIONS

TUESDAY, SEPTEMBER 18, 1962

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 3302, New Senate Office Building, Senator Edmund S. Muskie (chairman) presiding.

Present: Senators Muskie, Ervin, and Mundt.

Also present: Warren I. Cikins, staff director; James E. Smith, chief consultant; Lurlene P. Wilbert, chief clerk; and Dee Craven, assistant chief clerk. From the full committee: Walter L. Reynolds, chief clerk and staff director; Ann M. Grickis, assistant chief clerk; and Arthur A. Sharp, staff editor.

OPENING STATEMENT OF THE CHAIRMAN

Senator MUSKIE. The committee will be in order.

This is the first meeting to be conducted by the newly created Senate Subcommittee on Intergovernmental Relations established under Senate Resolution 359 of the 87th Congress.

I should like to include in the record at this point the resolution (S. Res. 359) and the report which accompanied it (S. Rept. 1716). (The resolution and report referred to follow:)

[S. Res. 359, 87th Cong., 2d sess.]

[Considered and agreed to; title amended]

RESOLUTION

Resolved, That the Committee on Government Operations, or any duly authorized subcommittee thereof, is authorized under section 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdictions specified by subsection 1(g)(2)(D) of rule XXV of the Standing Rules of the Senate, to examine, investigate, and make a complete study of intergovernmental relationships between the United States and the States and municipalities, including an evaluation of studies, reports, and recommendations made thereon and submitted to the Congress by the Advisory Commission on Intergovernmental Relations pursuant to the provisions of Public Law 86-380, approved by the President on September 24, 1959.

SEC. 2. For the purposes of this resolution the committee, from the date of approval of this resolution to January 31, 1963, inclusive, is authorized (1) to make such expenditures as it deems advisable; (2) to employ upon a temporary basis, technical, clerical, and other assistants and consultants: *Provided*, That the minority is authorized to select one person for appointment, and the person so selected shall be appointed and his compensation shall be so fixed that his gross rate shall not be less by more than \$1,400 than the highest gross rate paid to any other employee; and (3) with the prior consent of the heads of the

departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government.

SEC. 3. The committee shall report its findings, together with its recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1963.

SEC. 4. Expenses of the committee, under this resolution, which shall not exceed \$40,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

Amend the title so as to read: "Resolution authorizing a study of intergovernmental relationships between the United States and the States and municipalities."

[S. Rept. No. 1716, 87th Cong., 2d sess.]

STUDY OF INTERGOVERNMENTAL RELATIONSHIPS BETWEEN THE UNITED STATES AND THE STATES AND MUNICIPALITIES

The Committee on Rules and Administration, to whom was referred the resolution (S. Res. 359) authorizing a study of intergovernmental relationships between the United States and the States and municipalities, having considered the same, report favorably thereon with an amendment and recommend that the resolution as amended be agreed to by the Senate.

This resolution would authorize the Committee on Government Operations, or any duly authorized subcommittee thereof, from the date of enactment of the resolution through January 31, 1963, to expend not to exceed \$40,000 "to examine, investigate, and make a complete study of intergovernmental relationships between the United States and the States and municipalities, including an evaluation of studies, reports, and recommendations made thereon and submitted to the Congress by the Advisory Commission on Intergovernmental Relations pursuant to the provisions of Public Law 86-380, approved by the President on September 24, 1959."

The amendment adopted by the Committee on Rules and Administration, pro forma in nature, would amend the title more properly to reflect the purpose of the resolution.

The purposes of the contemplated inquiry are more fully expressed in a letter to Senator Mike Mansfield, chairman of the Committee on Rules and Administration, from Senator Edmund S. Muskie, chairman of the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, which letter (with accompanying budget) is as follows:

U.S. SENATE,
Washington, D.C., July 9, 1962.

HON. MIKE MANSFIELD,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing a copy of Senate Resolution 359, authorizing the creation of a Subcommittee on Intergovernmental Relations which I reported from the Committee on Government Operations on June 29, 1962. The resolution has the unanimous approval of the Committee on Government Operations.

The Government Operations Committee has become increasingly aware of the complexity of the problems affecting the relations between the Federal, State, and local governments. Three members of the committee—Senator Ervin, Senator Mundt, and I, are members of the Advisory Commission on Intergovernmental Relations. From time to time, the Government Operations Committee has been assigned legislation related to the problems of intergovernmental relations, some of which has been developed in the Advisory Commission.

We have proposed the establishment of a permanent Subcommittee on Intergovernmental Relations because we believe that such a subcommittee could make a fruitful contribution in the area of intergovernmental relations by offering solutions to specific problems and illuminating general problems affecting all levels of government and their relationships.

Since its establishment in 1959 as a permanent organization, the Advisory Commission on Intergovernmental Relations has made remarkable progress. Its

10 reports have been treated with great respect, and 3 of its 11 recommendations for congressional action have been adopted. It is clear that, as the Commission gains momentum, it will provide more legislative recommendations for the consideration of Congress. Some of its present proposals are pending before the Government Operations Committee and we may anticipate that more will be referred to the committee in the future.

In the last 3 years, because of the workload in other subcommittees of the Government Operations Committee, special subcommittees have been set up to conduct hearings on legislation involving intergovernmental relations. We believe that the need and the growing responsibility for action in the intergovernmental relations field can best be served by the establishment of a new permanent subcommittee with a small, competent staff. Such a subcommittee would not trespass on the responsibilities of other subcommittees. The proposed budget for the remainder of this Congress would total \$40,000. I am submitting with this statement a copy of the proposed budget.

The proposed subcommittee would be in a position to develop more adequate information on the problems of intergovernmental relations, would be able to hold hearings, to which Advisory Commission recommendations and other legislative suggestions would be given appropriate consideration, and would give interested parties from all parts of the country an opportunity to comment on proposals in the intergovernmental relations field.

There are bills now pending before the Government Operations Committee which could be referred appropriately to a Subcommittee on Intergovernmental Relations. We anticipate that the work of the subcommittee could begin this summer and that fall hearings on general problems affecting intergovernmental relations problems could be scheduled.

We believe the proposed subcommittee could make a major contribution to the strengthening of our Federal system and to the enhancement of cooperation between all levels of government.

We hope the resolution will meet with the favorable consideration of the Committee on Rules and Administration.

Sincerely,

EDMUND S. MUSKIE, *U.S. Senator.*

Budget

Position	Number	Base salary per annum	Gross salary per annum	Monthly salary (gross)	Total for period of budget (gross)
STAFF					
Legal and Investigative:					
Staff director.....	1	\$8,040	\$16,102.90	\$1,341.90	\$9,393.30
Chief consultant.....	1	8,040	16,102.90	1,341.90	9,393.30
Administrative and clerical:					
Chief clerk.....	1	3,600	7,996.37	666.36	4,664.52
Assistant chief clerk.....	1	2,760	6,295.16	524.60	3,672.20
Total.....					27,123.32
ADMINISTRATIVE					
Contribution to employees health benefit programs (Public Law 86-382, effective July 1, 1960).....					250.00
Contribution to civil service retirement fund (6½ percent of total salaries paid).....					2,088.00
Contribution to employees Federal employees group life insurance (27 cents per month per \$1,000 coverage).....					62.00
Reimbursable payments to agencies.....					5,000.00
Travel (inclusive of field investigations).....					2,500.00
Hearings (inclusive of reporters' fees).....					1,000.00
Witness fees, expenses.....					200.00
Stationery, office supplies.....					250.00
Communications (telephone, telegraph).....					800.00
Newspapers, magazines, documents.....					250.00
Contingent fund.....					476.68
Total.....					12,876.68
Grand total.....					40,000.00

Funds requested, Senate Resolution 359, \$40,000.

Senator MUSKIE. In this material will be found the reasoning which led to Senate action to give specific attention to ways and means of enhancing cooperation among all levels of government and strengthening our Federal system.

The field of intergovernmental relations might be categorized as the "hidden dimension of government."

Performing as almost a fourth branch of government in meeting the needs of our people, it nonetheless has no direct electorate, operates from no set perspective, is under no special control, and moves in no particular direction.

Programs in this field make an unpredictable impact on our society and our economy. The world of intergovernmental relations is represented by no policymaking body—there is no executive, no legislative, and no judiciary. The Advisory Commission on Intergovernmental Relations serves as its major meeting ground, but this organization functions only in an advisory capacity.

What we hope to do in the work of this subcommittee is to give this so-called hidden dimension of government definition and identity—to understand what it is and what its potential is, and in what directions it is moving.

Evidence that this field makes a major impact on the lives of all Americans can be found in its involvement in such matters as highways, housing, public assistance, hospitals, airports, public health, unemployment compensation, education, agricultural extension, and waste treatment facilities.

A substantial amount of our governmental expenditures is involved in these programs every year. Assuming that we consider the combined Federal, State, and local contributions, estimates of the sum involved range from \$11 billion in fiscal 1962 to \$14 billion in 1963.

It is significant to note that no governmental authority is prepared to provide any specific data on this subject. This amount is greater than the total Federal budget used to be in the not too distant past, and yet we do not see it appearing as a recognizable entity in the Federal budget or in State and local budgets.

It is our purpose today to explore with a panel of experts the problems in the field of Federal-State-local relations which they view as currently causing major difficulties in the proper functioning of our Federal system.

It is clear that many Americans hold drastically conflicting views on the relative roles of the different levels of government, and it is our intention to give careful attention to every point of view to determine which pattern of interrelationships best serves the needs of the United States during this period of our history.

Woodrow Wilson said that "the question of the relation of the States to the Federal Government is the cardinal question of our constitutional system."

Our Founding Fathers created a system of the division of powers between levels of government which has withstood the test of time. There are those who say that the system is outmoded and an anachronism in this space age. But we find growing evidence that State and local governments are trying to make the necessary adjustments to meet the needs of the time.

What seems to be the pattern that is taking shape in governmental efforts to cope with public needs and demands has been referred to by one authority as a "marble cake" of relationships rather than the old "layer cake."

More and more, the emphasis is on cooperation rather than competition among levels of government. We hear less talk about States rights and more talk about States responsibilities.

When it became clear that the Federal Government had more power to accomplish certain public ends than was necessary to do the job, the comment of James Madison that the system required "reciprocal forbearance" took on new meaning.

There is no sense denying that the 20th century has seen the rise of revolutionary demands on the part of the people for the provision of services by the Government. What we are striving to achieve is a new balance of governmental activity which unshackles all levels of government to perform these tasks adequately.

At the same time, we must be on guard to prevent the growth of the kind of imbalance that leads to the stultification of local initiative, and the deprivation of individual rights.

The tendency to overlook the establishment of appropriate standards by which to measure the total cost and the allocation of the costs of government must be checked if sound fiscal management is to prevail.

When we look at the current situation in the field of Federal-State-local relations, we find numerous problem areas existing, many of them festering because of inaction or the lack of proper action.

A brief cataloging of trouble spots includes: the governmental organization of metropolitan areas, the conservation of natural resources, the division of revenue resources, the apportionment of electoral districts (now being redressed somewhat by the Supreme Court decision), the provision of adequate transportation, the provision of adequate housing, the maintenance of a high standard of education, the status of grant-in-aid programs, and many more.

Such basic questions as the extent to which local self-government should be granted, what measures should be adopted to strengthen State and local finances, how decentralization of government administration should be achieved, and what steps should be taken to improve cooperation between the levels of government, remain unanswered.

Our subcommittee has been given the broad mandate by the Senate to "examine, investigate, and make a complete study of intergovernmental relationships between the United States and the States and municipalities."

It is also called upon to review the recommendations made in this area by the Advisory Commission on Intergovernmental Relations. In order to perform these functions, we should first find out what the relevant organizations representing both geographic and functional groups regard as the basic problem areas from their point of view. We are now, of course, in the very preliminary stages of reviewing these problem areas and intend to hold additional hearings this fall to determine what specific contributions the subcommittee can make to the resolution of these problems.

In addition to observations of the men who have kindly agreed to assemble here today for a panel discussion of these issues, we plan on

calling for the views of a wide range of governmental and nongovernmental organizations, scholars and practitioners alike.

In this manner, we hope to ultimately be able to offer to the Congress some legislative proposals which will contribute to the strengthening of our Federal system.

I would like to ask Senator Mundt to present his statement at this inaugural meeting of the subcommittee.

STATEMENT OF SENATOR MUNDT

Senator MUNDT. Thank you, Mr. Chairman.

First of all I congratulate you on a very useful and comprehensive statement, it seems to me, which sets the stage for our operations.

This hearing marks the public debut of the newly created Senate Subcommittee on Intergovernmental Relations. I have great confidence that this subcommittee, acting as an agency of the National Legislature, can make a meaningful and constructive contribution to the advancement and improvement of our Federal system.

It seems to me most fitting that the first public action of this subcommittee should be a panel discussion by a group of men, all knowledgeable in the field of intergovernmental relations, concerning the critical problems that face us, as a nation, in the broad sector of Federal-State and local governmental relations. This discussion and the similar discussions, which will be pursued with other panels, will, I am sure, provide us with valuable information and ideas.

The Federal system, as conceived by the drafters of the Constitution, stands as one of the most remarkable and worthwhile innovations in the history of mankind's experience with representative government.

Historically, we know that the Federal principle came into being as a compromise between two sharply divided schools of thought—those who sought to abolish all State autonomy and establish a unitary governmental authority at the national level, and those who desired a central government of form rather than substance, with the primary governmental authority being retained by the several States.

From its inception, the essence of the Federal system has been balance—the striking of an equilibrium between the central authority required for unity and action as a single national entity and the circumferential authority and State autonomy demanded for the meaningful operation of our democratic political system.

We have now functioned as a nation under this system for 173 years. During that period the Federal system has undergone many changes and adjustments.

A third level of government has emerged, deriving its powers and authority from the States. Generally denominated as local government, this third level includes our county, township, and municipal governments, which are charged with providing basic governmental services specially tailored to meet the needs of a particular locale or an individual community.

Since the original enunciation of the Federal principle, population growth, the increased mobility of people, military emergencies, economic crises, industrial development, commercial diversification, and dramatic technological advancements have wrought significant and lasting changes in the character and composition of this Nation.

These changes of profile and content have brought with them ever-increasing demands for better service at all levels of government.

Three major wars and a serious economic depression during the past five decades have compounded the pressures for governmental action. All of these events and developments have combined to place extraordinary stresses and strains on the Federal system.

In numerous instances, responding to pressures for emergency action, the Federal Government has expanded existing authority or undertaken responsibilities previously carried by the States and their local units of government.

Rarely has there been a relinquishment or retrocession of this authority by the Federal Government after the emergency has passed.

This development has caused many individuals to contend that the Federal system is now out of balance with too great an accretion of power and authority at the center. Other commentators have concluded that the continued growth of central power and authority is an inevitable development in an increasingly complex society.

There are even some who have charged that State and local units of government are nothing more than outmoded relics of the 18th century, lacking the competency and capacity to govern in these fast-moving times of the 20th century.

I personally regard this latter view as ismatic propaganda and directly in conflict with the abundant evidence of dramatic State and local governmental growth since the end of World War II.

This diversity of opinion and viewpoint on the present and future status of the various levels of government reflects the important need for an objective assessment and analysis of the Federal system and the current relationships existing among its constituent parts. I am delighted that the Senate has charged us with that responsibility.

During the course of our study and investigation I hope that we can give consideration to such problem areas as:

- (1) The equitable division of tax sources among the various levels of government.

- (2) Federal involvement in urban development and the accompanying impact on State and local government.

- (3) The system of Federal grants-in-aid; its growth; its direction; and its effect on the efficient utilization of State and local resources.

- (4) The prospective role of State and local government in our development of peaceful uses of atomic energy.

- (5) The appropriate role of the National Government in assisting State and local governments to more effectively fulfill their functions and responsibilities.

- (6) The growth of interlocal cooperation; its capacity for effecting improvement in the quality of government at the local level; and its corresponding use in areas of high and low population density.

The chairman has suggested several other avenues of inquiry which should lead to a more comprehensive understanding by the Congress of the critical challenges presently confronting the Federal system.

In the final analysis what we are seeking, and what I hope we will obtain, are objective answers to the eternal question, "How can representative government best serve the needs and aspirations of the people from which it derives its power and authority?"

Senator MUSKIE. Thank you, Senator Mundt, for an excellent statement.

I particularly like your emphasis on the point that we are as interested in strengthening State and local government, indeed, perhaps more interested in strengthening those two levels of government than we are in any other objective which this committee will pursue.

Senator Ervin?

STATEMENT OF SENATOR ERVIN

Senator ERVIN. Mr. Chairman, I have no prepared statement. However, I would like to make a few observations on the subject under discussion.

In my judgment, William Gladstone was clearly right in the main when he said that the Constitution of the United States was the greatest instrument ever struck off at a given time by the brain and purpose of man.

As a matter of fact, however, he was partly in error in that statement. The Constitution of the United States was not struck off at a given moment although it was reduced to writing at a given moment. It embodied, however, the experience of many generations of men in their quest for a system of government in which man should be guaranteed the right to self-rule, and also the right to protection against governmental tyranny.

I think that the finest system of government ever devised by man is the American system of government, and I think that is true because the Constitution is correctly described in a nutshell in the statement made by Chief Justice Salmon P. Chase in *Texas v. White*. He said in that case:

The Constitution, in all of its provisions, looks to an indestructible union composed of indestructible States.

I think if we were to destroy the States we would destroy our constitutional system of government and do the greatest injury to the cause of good government that could possibly be done.

The States are in jeopardy at this time, I think, for several reasons. The first reason is that those who seek to impose their will upon others in governmental matters would prefer to deal with one government only; namely, the Federal Government.

They do not like to deal with 50 State governments and the Federal Government, in addition.

They realize that if they can immobilize State government and control the Federal Government they can control all of the government.

Now, this would have a very bad effect, if it were to be accomplished, in my opinion, for one reason: I think one of the great values of our system of government, which separates the powers of government between the National Government and State government, lies in the fact that it affords us 50 laboratories in the States for governmental experiments.

A State can experiment with an innovation in government or economics and if it turns out bad it doesn't affect us governmentally speaking or economically speaking except in one limited area.

If it turns out good then it can be adopted in the other States.

But if the Federal Government indulges in an experiment which has tragic consequences it affects us tragically at all levels.

Then there is another thing of a detrimental character in shifting all responsibility of government from a State level to a national level, and that is that such action relieves the people of a sense of responsibility at the local level. One of the things about democracy which is essential if a democracy is to endure is a sense of responsibility in individuals at local levels.

Someone has said that the saddest epitaph that can be written on the loss of any right is that those who had the saving power failed to stretch forth a saving hand while there was yet time. I think one of the finest things that this subcommittee can do is to take steps which preserve the Federal system of Government with its division of powers between National and State levels.

This thing goes far beyond merely governmental things. It goes to the personality of the people of the United States.

A member of the Supreme Court of the United States whom I admired very much was Justice Brandeis. Justice Brandeis is said by Judge Learned Hand to have made this statement, "The States are the only breakwater against the ever-pounding surf which threatens to submerge the individual, and destroy the only society in which personality can exist."

I think there is more than a modicum of truth in that statement. Whenever you shift all responsibility of government from the States to the national level, you destroy the only society in which the personality really can exist. You are certainly impressed by the truth of this observation when you try to deal with some of these overgrown Federal agencies.

I recognize there is a great deal of difficulty in local self-government and particularly in the cities due to the fact that the Federal Government monopolizes the sources of taxation which yield the taxes most easily collected. I think that one of the finest contributions which this subcommittee can make is to see if we can't devise some method by which we can prove that Aesop was not thinking of the Federal Government when he told the story about the lion.

He said that the lion invited another animal to visit him in his cave. The animal said, "I am not coming because I notice that all tracks lead into your cave and none lead out."

Now that is certainly a parable about the system of taxation which prevails in this country. I think this is a field in which something drastic has got to be done in order to give to the States and the local communities more sources of taxation than they now enjoy. The alternative is to have them continue to do what they have been doing with increasing frequency, and that is to come to Uncle Sam to beg for a little more of the patrimony which he has taken from them.

These are just some random observations. As a consequence of knowledge gained from my service with him in the Senate, I know the subcommittee has an excellent chairman, a very devoted American, who has participated with great distinction in government at several levels. I think it is most fortunate that the Senator from Maine is chairman.

I will say a word about my friend from South Dakota who has just left. He comes from an area where, like my own State, there are still some folks who believe that a Federal system of government ought to be preserved and that really and truly the Constitution was

designed to create an indestructible union composed of indestructible States.

Senator MUSKIE. Thank you, Senator Ervin.

As is obvious, I am sure, to everyone in the room, Senator Ervin doesn't need preparation to present a thoughtful and a stimulating and scholarly statement on almost any subject that I might say happens to come to hand.

I had the pleasure of working with him rather closely this summer on a subject which has been mentioned so much elsewhere that I am not going to give it another forum here.

I have come to appreciate his qualities as a man, as a legislator, as a lawyer, and as a scholar and there is no one in Congress for whom I have more respect or affection than Sam Ervin and I am delighted that he is here this morning.

As you can see from these three statements there are variations in points of view on this subject. I suspect that fundamentally the variations in some respects at least may be more apparent than real.

In any case, I hope that you people who are present feel the three members of the subcommittee present here are at least devoted to the principles of the Federal system but they differ only in their view as to what or how that Federal system ought to be operated in any given moment in the history of our country.

Now, the Sergeant at Arms is out looking for Senators to make a quorum. Senator Mundt went over so we won't interrupt this panel. Why don't you go now, Senator Ervin, and I will later, if the Sergeant at Arms doesn't get here first.

I am most appreciative of the fact that we have here on such short notice, and I appreciate the fact that it is short notice, people who have such outstanding qualifications for discussing various aspects of the subject.

But before I get to them, without objection, I will include at this point in the record a statement covering the program policy which was adopted by the subcommittee in executive session this morning.

(The statement referred to follows:)

POLICY STATEMENT REGARDING PROGRAM OF THE SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

The Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations was created pursuant to Senate Resolution 359 of the 87th Congress to examine, investigate, and make a complete study of intergovernmental relationships between the United States and the States and municipalities. In conducting these duties, we are also commissioned to review the legislative recommendations of the Advisory Commission on Intergovernmental Relations and other legislative proposals dealing with intergovernmental relations which are referred to the Committee on Government Operations. It is our belief that we can make a major contribution to the strengthening of our Federal system and to the enhancement of cooperation between all levels of government.

In order to best live up to our mandate, I believe that we should conduct a series of hearings this fall designed to determine what objectives should be sought in the field of intergovernmental relations that would best reflect the will of the American people. To determine these objectives, we should make a thorough canvass of the relevant organizations and individuals who have devoted themselves to a meaningful extent to examining problems of federalism. These groups will undoubtedly have different views of what steps should be taken to resolve these problems. It will then be our task to analyze these responses to determine which represent the majority point of view on these questions and which objectives are attainable or useful from the point of view of the ideals

of our system of government that we are dedicated to preserve. The panel discussion we are holding today is the first of this series of hearings and is being conducted to provide us with some preliminary thoughts on these matters.

One of the methods that we intend to employ this fall to obtain necessary information about the status of intergovernmental relations is the circularization of a questionnaire to prominent people and organizations. This questionnaire will cover the whole range of problems involving Federal-State-local relations, including matters related to grants-in-aid, reapportionment, conservation of natural resources, transportation, education, housing and urban renewal, metropolitan area problems, the assignment of tax sources, greater tax coordination, payments in lieu of taxes, etc. It is our hope to make a contribution to these areas that will strengthen all levels of government and make them more responsive to the will of the people.

We are obligated to determine to what extent the division of responsibilities between levels of government is relevant to the ability of government in general to do the jobs expected of it in this second half of the 20th century. The Founding Fathers had strong convictions about the value of local self-government and local authority. As the size and powers of the National Government continued to grow, we have seen the other levels of government tend to diminish in significance and influence. We should then attempt to evaluate the impact of this development on efficient and effective, as well as democratic, government. If we believe that some redress of the present imbalance is in order, we should then review the feasibility of various measures to strengthen State and local government.

With regard to the role of the States in the Federal system, one development that deserves close scrutiny is the growth of direct relationships between the National Government and the localities which tend to bypass the States. By the same token, the States have been guilty of inaction in many areas of public interest and ways and means of stimulating State action should be explored. The States have also often prevented local action on public problems because of the existence of such restrictions as constitutional or statutory limitations on local taxation or indebtedness. The unshackling of local government is a major goal of intergovernmental relations and one we should make every effort to promote. And, finally, there is great room for the expansion of the concept of decentralization of the administration of many of the programs established by the National Government.

A corollary problem associated with the ability of government to carry out the services expected of it by the people is the question of the cost of these services. Close attention should be paid to the comparative costs of carrying on various public functions by the different levels of government. We need to learn a great deal more about the optimum size of the unit of government best suited to carry out a specific public function, both in terms of economy and efficiency and in terms of our democratic tradition. There is therefore a direct relationship, which remains to be determined, between the size of each level of government and the cost of carrying out public services.

The kinds of measures we might explore in this field include the most intelligent assignment of tax sources to each level of government, the possible separation of tax sources, and the development of greater tax coordination. While the legislation in this field is a matter for Finance Committee jurisdiction, we can make a major contribution to legislative thinking on what the most desirable revenue pattern might be. This, of course, involves an assessment of the direction of the various grant-in-aid programs and a determination of their impact, the extent to which they are meeting their objectives, and the new areas that might need attention. Another area of longstanding interest to the Congress is payments in lieu of taxes. We might want to reexamine the thinking on this subject which had led in the past to such proposals as S. 910. In general, concern for a healthy Federal system requires that we make every effort to promote measures designed to strengthen State and local finances.

We will also be giving attention during the fall to proposals by the Advisory Commission on Intergovernmental Relations which have been made to all levels of government which are of relevance to the work of the subcommittee. A copy of the ACIR recommendations to date is before each of you.

The subcommittee has had referred to it by the full committee six bills which deal with the general problems of intergovernmental relations. A list of those bills is also before you. The sponsors of three of them have not indicated a desire for hearings at this session and so they will be carried over until next year.

S. 154 was introduced by Senators McClellan, Bennett, and Moss. The purpose of this bill is to permit the States to exercise legislative jurisdiction over Federal lands within those States. In view of the close attention and full-scale hearings conducted by the Senate Government Operations Committee on this bill during the past few years, we do not believe any useful purpose will be served by additional hearings at this time.

S. 2286, to provide for the periodic congressional review of Federal grants-in-aid to State and local units of government, has had a full set of hearings in the House Subcommittee on Intergovernmental Relations, and a revised version of that bill has been introduced by Congressman Fountain. We are hopeful of giving this proposal a more complete exposure during this fall.

S. 3363, to provide for more effective utilization of certain Federal grants by encouraging better coordinated local review of State and local applications for such grants, has been introduced in order to provide for widespread public attention to the problem. On this matter also we are hopeful for greater exposure during the fall hearings.

Another matter which may be considered by the subcommittee this fall is legislation introduced by several Senators dealing with the disposal of the property known as Ellis Island for purposes consistent with the public interest and welfare.* There are various alternative suggestions on what should be done with Ellis Island and we may want to explore the most desirable method for utilizing this property.

To sum up, our program will include the following:

- (1) Circularization of a questionnaire to determine expert opinion on the problems of intergovernmental relations;
- (2) Hearings based on responses to this questionnaire;
- (3) A report of subcommittee recommendations proposed as a result of these hearings;
- (4) Consideration of the legislation referred to the subcommittee by the Committee on Government Operations; and
- (5) Consideration of the recommendations made by the Advisory Commission on Intergovernmental Relations.

Senator MUSKIE. Now, our first panel member—we have six this morning—is Mr. William G. Colman, Executive Director of the Advisory Commission on Intergovernmental Relations, with offices here in Washington.

I am going to ask each member of the panel to present his prepared statement first so we may be sure to get them all before us before we get to the discussion and questions. I know these statements are not too long, and I know that we would all like to hear them, and if we do hear them be in a better position to carry on an intelligent discussion thereafter.

I am hoping that we can have a complete and thorough discussion by 12:30 because the committee members are taking up other matters and we will have to adjourn.

If the discussion is warm enough and incomplete enough at that point to justify returning perhaps tomorrow morning, why, that would be all right with me, too.

So, I hope there is no limitation on your giving expression to anything which you are stimulated to say at any point this morning.

With respect to Mr. Colman, I would like to pay particular tribute to him and to the staff which he represents and to the organization for which they work, the Advisory Commission on Intergovernmental Relations.

I think they are doing an outstanding job on a very difficult task. The reports which have been prepared, the specific proposals which have been put together by this organization are the work largely of Mr. Colman and his staff, and of the Chairman of the Commission.

*A preliminary hearing was held on the bills S. 1867, S. 2596, and S. 2852 on Sept. 26, 1962. Additional hearings are to be held in New York at a later date.

The Chairman is in the room. He will not make a formal statement or participate in the panel, but he may be stimulated to say something, if I know him right, at some course of the morning. I would like to present Mr. Frank Bane who is Chairman of the Advisory Commission on Intergovernmental Relations.

We have another distinguished gentleman sitting beside him, the White House assistant in the field of intergovernmental affairs who, to my mind, is an esteemed statesman, Brooks Hays, former Congressman from Arkansas. We welcome you here.

Now, we will proceed to hear Mr. William G. Colman.

STATEMENT OF WILLIAM G. COLMAN, EXECUTIVE DIRECTOR, ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Mr. COLMAN. Thank you very much, Mr. Chairman.

We understand you would like to have from the Advisory Commission on Intergovernmental Relations a brief summary of the work of the Commission, particularly with respect to matters which are now or later may become the subject of legislative concern of the subcommittee. We have prepared a brief statement for that purpose, after which I will try to respond to any questions which the committee might have.

First, a general comment. I know that I am speaking for all of the members of the Commission when I say that the Commission and its staff were very pleased at the passage of Senate Resolution 359 creating your Subcommittee on Intergovernmental Relations. We look forward to working with the subcommittee and its staff and in endeavoring to serve you in any way possible.

The guidance and assistance which we have received from the corresponding subcommittee on the House side under Congressman Fountain has been most helpful, and we know that this will be the case on the Senate side as well, particularly since you, Mr. Chairman, and two of your colleagues on the subcommittee, Senator Mundt and Senator Ervin, are also members of the Advisory Commission.

Let me mention briefly five problem areas with which the Commission has been concerned or is presently working and which are likely to be of direct concern to the subcommittee.

1. Growth of Federal grants-in-aid—to which you and Senator Mundt alluded in your statements.

The Advisory Commission is convinced of two things with regard to Federal grants-in-aid.

First, grants-in-aid are now a necessary and vital part of our Federal system. They are here to stay.

Second, grants-in-aid are increasing, in numbers and magnitudes, at a rapid rate and we may come to a situation where grants-in-aid are an impenetrable jungle of legal, financial, political and professional interlacings which will sorely try the minds of officials at all levels—Congressmen, Cabinet members, Governors, mayors, and county officials—in trying to maintain any kind of rational legislative and administrative direction of the areas of Government affairs in which grants play so large a part.

We would guess that the present session of Congress alone will have added, by the time of adjournment, quite a number of new grant-in-aid programs which already total 50-odd.

2. Federal accounting and auditing requirements associated with grants-in-aid.

According to some informal comments of representatives of the General Accounting Office, the variety of Federal grants-in-aid and the differing requirements for Federal accounting and auditing associated with each one of these grants, are tending to create an accounting maze at the State and local levels.

We have been conferring with Brevard Cridfield, executive director of the Council of State Governments, and with representatives of the General Accounting Office and the Budget Bureau regarding this problem. This item is one of the "possibles" which is before the Commission for future inclusion in its work program. How far we can get with it remains to be seen, of course, but it is, we feel, a very significant problem of intergovernmental relations.

3. Organizational requirements associated with Federal grants-in-aid. Some of the statutes establishing grant-in-aid programs, as well as the administrative regulations adopted pursuant thereto, are alleged by many Governors to create significant restrictions upon the freedom of the States to organize their own administrative departments in the most effective manner.

For example, the Governors' conference last year adopted a resolution declaring, in part, that "the conference"—that is, the Governors' conference—"deplores the tendency of Federal agencies to dictate the organizational form and structure through which the States carry out federally supported programs."

Here again, we have been working with the Council of State Governments and with Mr. Brooks Hays' office at the White House in a very tentative exploration of this problem. It will require a great deal more work.

4. Questions of equalization and measurement of fiscal capacity.

To an increasing extent provisions are being inserted in Federal grant-in-aid statutes which, through apportionment and matching ratios, endeavor to recognize differences in the fiscal ability of the States to carry out the particular governmental services aided by the grants.

We have on our current work program a policy question on the degree to which Federal grants-in-aid should be equalizing in nature and a report on this subject will be placed before the Commission at an early meeting. We are also issuing a staff report on the results of a pilot project on the closely related technical problem of how the fiscal capacity of State and local governments and the tax effort they are making may best be measured. These are highly important questions for the Congress and the executive branch if our grant-in-aid programs are not to work at cross purposes.

5. Intergovernmental relations in metropolitan areas.

The complexity of relationships among governmental jurisdictions in the large metropolitan areas is probably the major friction point of intergovernmental relations today.

We feel that the Commission has been able to do some significant work in this field so far—mainly directed toward recommended State legislation and other action designed to ease a number of these problems. We have just compiled the Commission's State legislative proposals into a single document which we can supply for the information of the subcommittee.

However, we have left so far relatively untouched the whole question of how the various Federal programs which affect metropolitan areas may be brought into better relationship with one another and with the levels of government concerned.

Our first limited step in this direction is reflected in the bill which is now before your subcommittee, S. 3363. This bill is designed to carry out an earlier recommendation of the Commission that certain Federal grant-in-aid applications for physical facilities in metropolitan areas be subjected to the review and comment of a metropolitan area planning body before being acted on by the Federal departments or agencies.

That concludes my statement, Mr. Chairman, and we thank you for this initial opportunity of appearing before you. We are looking forward to many such occasions in the future.

Senator MUSKIE. Thank you, Mr. Colman. I think it might be well at this point in the record to point out that the subcommittee, in its program for the fall, indicated an intention to conduct as part of its hearings some discussions of S. 3363, also of S. 154 and S. 2286, all three of which are products of the Commission's work.

Our next witness, another distinguished gentleman, is Mr. John J. Gunther, executive director of the U.S. conference of mayors here in Washington.

STATEMENT OF JOHN J. GUNTHER, EXECUTIVE DIRECTOR, U.S. CONFERENCE OF MAYORS

Mr. GUNTHER. First, Mr. Chairman, may I say I have a rather bad cold so if you can't understand me ask me to repeat it.

The U.S. conference of mayors is made up of the Nation's cities with populations of 30,000 or over. There are 580 such cities in the United States. The cities are the members of the conference and they are represented therein by their mayors.

We are indeed pleased to appear here today to discuss in general terms matters of intergovernmental relations of concern to cities.

The city has been the mark of civilization throughout world history. Peoples have lived on the land or followed their flock when such life was necessary; but, when they were able to secure food and fiber without the individual farm or the individual herd they gathered together and became citizens of towns; certainly this has been the trend in our great country.

This has created serious governmental problems. For the most part our governmental structure at the Federal and State level is still tied to the demands of the rural past. It is our task to fashion new government tools to meet the urban present. We suggest this is not merely a question of equity but also one of survival. This problem is well stated in the resolution on "Federal-State-City Cooperation" adopted in May 1962 by the annual conference of mayors. The resolution reads as follows:

Whereas the complexities of modern life compel the interdependence and cooperation of all governmental units to cope with common problems; and

Whereas these multiplying problems, centered in the cities, have no geographic boundaries of precincts, wards, municipalities, townships, counties, or States, but inevitably are national in scope; and

Whereas joint Federal-State-city resources, programs, and efforts must be utilized fully if solutions to the problems are to be reached; and

Whereas the Nation relies first on the cities—the vast centers of American life—to provide the initiative, dynamics, and leadership necessary for attainment of domestic objectives; and

Whereas strong and effective municipal government is the best guarantee that these purposes will be achieved; and

Whereas the traditional American principles of local autonomy, home rule, self-determination, and fair legislative and administrative representation at State and National levels are endangered not by intergovernmental collaboration but—too often—by failure of State governments to acknowledge the rights and needs of the cities; and

Whereas such failure weakens the common national resolve: Now, therefore, be it

Resolved, That the United States Conference of Mayors—

Reaffirms its support of Federal-State-city cooperation.

Reasserts its defense of true municipal home rule.

Asks once again for establishment of a Cabinet post to deal with the problems of the cities.

Now may we turn to an outline of the major problems affecting Federal-State-local relations at this time.

While we would not insist that money would solve all the problems of a city, we do know that without money very few city problems can be solved. And increasingly our cities must look beyond themselves for money.

After having looked to State capitals for generations as urban problems multiplied and State interest in the urban citizen lagged, the cities began to overlook the State and go directly to the Federal Government.

It is not our task here today to argue the merit or demerit of direct Federal-city-assistance programs. Rather we would discuss with you reasons why these programs developed and suggest ways in which a new and mutually advantageous city-State relationship might be achieved.

The States as governmental units in this representative system of government have for half a century labored under a handicap. This handicap is malapportionment of the State legislatures.

The administrative agencies of the State too often find that those who determine the policy they are to follow are concerned with the well-being of only a part of the population and too often a very small part. In our enterprise system of business this condition would not long be tolerated, for if a company's directors set policies which forced management to serve a few stockholders to the detriment of the majority of stockholders, those directors would soon be replaced.

Recent court decisions should soon lead to a removal of this handicap in State government. Once fair representation is assured in State legislatures, the State executive and his administration will face a challenge—a challenge to adjust State government to meet the governmental needs of the urban citizen.

Let us assume then that the State laws are to be responsible to urban needs. What then would we hope for from the State administrations?

We would hope to see State administrations adjust rapidly to meet the challenge. To meet it—not evade it. Cities expect to be considered in the expenditure side of the budget as well as on the income side. We have no quarrel with equalization as a principle, but we

don't want equalization to be a cover for robbing the urban Paul to pay the rural Peter.

Where the State severely restricts city revenue raising capacity and collects substantial revenues within the city, simple equity dictates expenditures by the State to meet urban governmental needs. It is when the State violates equity that the city turns to Washington for aid.

We would also look to the State administrations to provide the substance of the case for removal of constitutional and statutory restrictions which make it impossible for local governments to meet their responsibilities.

Surely we can expect an increased recognition that if the city is to be responsible for its affairs, it must have the authority to govern—including authority to tax and spend.

Yes, we do expect improvements in State-city relations growing out of reapportionment. However, this does not mean we would then have no concern with Federal-city relations. We know that many local improvement programs such as transportation, urban renewal, housing, environmental health, and hospital construction require Federal cooperation and assistance. In many of these programs, the simple resolution of turning the taxing power back to the State or local government would prove inadequate. The revenues are not always available in the communities in true relationship to the need.

How much Federal control should go with Federal aid? This would be a most fruitful area for study. We in local government invite the controls necessary to assure that the funds are used for the purpose voted by the Congress. We reject controls beyond this point.

We question the superwisdom or superdedication, to the public good, of the Federal employee over the local public servant.

Within the national purpose and consistent with the integrity of Federal moneys, we believe all programs should be locally controlled. Your committee might well give this question detailed study.

More often than not our programs are Federal-State in nature. Too often, local officials are ignored in the administration of such programs. This results from the provisions in the Federal law. Rarely are there provisions requiring a part of funds under a program to be spent in cities. This is a subject which could well be investigated by your committee.

Turning for a moment to the intergovernmental relations aspect of the organization of the Federal Government, we would offer these comments. We need a Department of Urban Affairs. Every study of our governmental structure, both private and public, has urged the creation of such a department.

We are encouraged that President Kennedy and President Eisenhower, before him, have had staff assistants charged with the intergovernmental aspects of Federal programs. But these White House staff advisers are no substitute for practical, efficient, and equitable organization of the great urban programs now in the Housing and Home Finance Agency into a department. We urge your committee to study the record, and if you find that the volumes upon volumes of past analysis are inadequate, we hope you will call upon management experts and local government officials to again give testimony as to the need for a Department of Urban Affairs.

In closing, may we offer the complete cooperation of the U.S. Conference of Mayors in your efforts to explore and improve the relationship between the Federal, State, and local governments.

Senator MUSKIE. Thank you, Mr. Gunther.

I think I might say to Senator Ervin that we are having the prepared statements presented before the questioning begins.

Our next witness is Mr. Charles F. Schwan, Jr., Washington representative of the Council of State Governments.

STATEMENT OF CHARLES F. SCHWAN, JR., WASHINGTON REPRESENTATIVE, COUNCIL OF STATE GOVERNMENTS

Mr. SCHWAN. Thank you, Mr. Chairman.

Might I say that my paper begins "At the outset, it might be well to indicate to what this paper is not addressed." I might also say that, thanks to your committee staff, an oversight or two oversights on our part were corrected. This paper not only is not addressed to certain subjects, but it did not indicate who did the addressing.

Mr. Chairman, at the outset, it might be well to indicate to what this paper is not addressed. Considerations of time preclude consideration of areas in which there has been made substantial progress in achieving cooperation among governments at different levels. Similarly, problems in the process of solution—reapportionment for example—are not discussed. Finally, this paper will not include any discussion of State-local relations—important though these may be in any reasonably complete treatment of intergovernmental relations.

For at least a generation, much has been said about the slowness of the States to meet their responsibilities and to undertake programs in existing and emerging fields of State and local concern. It must be recognized that many examples of this slowness can be cited. On the other hand, State government is far different from what it was a generation ago. Many States have moved to meet some of their major problems. Now the question is how best to encourage and facilitate the meeting of State responsibilities more rapidly and more completely. Obviously, for the most part, the answer to this question must be found at the State level.

On the other hand, certain types of Federal action can have a fundamental effect on the ability of the States to carry out their responsibilities. They can produce a climate in which the States may be encouraged or one in which such initiative as they show can be foreclosed. This subject is too large and complex to be more than illustrated in a brief presentation. Consequently, what follows should be taken only as an identification of several major problems of Federal-State relations.

One of the most damaging doctrines in the entire field of Federal-State relations is that of preemption. No responsible person questions that when Federal and State action are in conflict, in areas where the Federal Government is validly exercising a constitutional power delegated to it, that the State must give way. Nor is it objectionable that reasonable leeway should be accorded to extensions of Federal policy in areas where Congress has actually meant to prescribe a complete system of regulation. On the other hand, the doctrine of pre-

emption is one to which Congress, in legislating, characteristically has given little attention.

For example, the Motor Carrier Act purports to be a comprehensive system for regulating interstate commerce by commercial motor vehicle. It empowers the Interstate Commerce Commission to do a number of things including the inspection of commercial vehicles engaged in interstate commerce to determine whether they meet mechanical safety standards. The act also makes it possible for the ICC to revoke or suspend a certificate of a carrier who consistently violates State weight limits and other highway laws. The ICC has only several hundred inspectors, most of them functioning part time, to enforce its regulations throughout the entire country. Such a force does not begin to be adequate for any but token enforcement. The only suitable agencies to do the job are the State and local police who are on the Nation's highways in the tens of thousands. Yet in the *Hays Freight Lines* case, the U.S. Supreme Court held that because the ICC could suspend or revoke the carrier's certificate on this ground, Illinois could not enforce its legitimate highway laws, even in the face of repeated violations. The Court's reasoning was that the Motor Carrier Act had preempted the field. Since it would be both extravagant and duplicative of State and local efforts to expand a Federal highway patrol to a size to police the highways and streets on which commercial vehicles engaged in interstate commerce are found, the most sensible course is for Congress to make it clear that the doctrine of preemption does not apply to such situations. Congressional silence will not avail, because it amounts to an ignoring of a Federal responsibility to make its own actions as clear as possible.

Another difficulty in the way of positive and effective State action is presented by the breadth of exemptions from general requirements of law which the Federal Government often claims for its own agencies. For example, the fact that the States could be doing more to control water pollution than they have done was offered as reason for expanding the Federal enforcement jurisdiction in this field. Yet in many places, rigorous State action would not clean up the waters because Federal installations discharge untreated sewage or inadequately treated wastes into the very same bodies of water. While the Federal Water Pollution Control Act of 1956 installed the Public Health Service as a partial supervisor of State and local efforts, and the 1961 act very much extended this role, the Federal statute specifically restricted the ability of any agency to cope with pollution from Federal installations. In 1956 it did so by providing that it is the policy of Congress to abate pollution from such installations only within existing appropriations. The 1961 act went no further than to permit the Secretary of Health, Education, and Welfare to include a statement in his reports that pollution from Federal installations is occurring. No other action can be taken. This situation is both incongruous and destructive of State efforts. Congress has in effect said that the Department of Health, Education, and Welfare may force municipalities and industries to abate pollution, and that it may even substitute its own judgment for that of the States in doing so, but that the Federal Government will continue to pollute with impunity, and in disregard of State or local standards of general application.

Moreover, it is appropriate to ask what the practical position of a State is when it seeks to enforce costly abatement requirements on its subdivisions and private persons who know that the Federal Government is not similarly amenable and is in effect negating all or part of the program in the waters concerned.

Another type of difficulty which the States encounter may be illustrated by the administration water resources planning bill (S. 2246). Among other things, this measure proposes the establishment of river basin commissions which would be the primary planning and coordinative agencies for water and related resources planning in the areas over which they had jurisdiction. The bill quite rightly identifies the scope of such commissions' interests as intergovernmental in character. It is clear that comprehensive treatment of water and related resources problems involves activities and policies of both Federal and State Governments. For this reason, the legislation proposes that the President appoint persons to act as State representatives and representatives of interstate agencies with jurisdiction in water matters. Aside from their identification as State and interstate agency representatives, these commission members are then treated in the bill in virtually the same manner as members of a Federal commission, which in fact they would be.

It does not seem that this approach stems from any desire to dilute or undermine responsible State representation. Rather, the provisions of the legislation result from a failure to recognize that State responsibility is equivalent to Federal responsibility, and that State interests and views must be advanced by officials chosen by and responsible to State Governors and legislatures to the same degree as their Federal counterparts are chosen and responsible at the Federal level. In meeting with representatives of the Senate Interior and Insular Affairs Committee and the Department of the Interior, we have endeavored to make the point that the States are independent policy-making units of government and should be treated as such. In passing I might add that we feel we have been making progress in gaining understanding of our position.

Another problem in Federal-State relations merits mention. This concerns the taxation by States of businesses engaged in interstate commerce. Public Law 86-272 set forth the type of activities multi-State businesses must conduct within a State before that State may impose a net income tax on the income derived by such businesses within the State. This was the first instance in which Congress dealt, in general legislation, with prescribing limits on the taxing power of the States.

The act also directed that studies be made—

of all matters pertaining to the taxation by the States of income derived within the States from the conduct of business activities which are exclusively in furtherance of interstate commerce, for the purpose of recommending to the Congress proposed legislation providing uniform standards to be observed by the States in imposing income taxes on income so derived.

Public Law 87-17 expanded the jurisdiction of the studies to "all matters pertaining to the taxation of interstate commerce by the States."

As might be expected, in the hearings held by a special subcommittee of the House Judiciary Committee, there were differences of view between witnesses for the business community and the States. The

former pressed hard for curtailing the authority of States to tax. The latter not only opposed such action, but argued strenuously against any Federal standards on State taxation of multi-State businesses. The position I might say reflected resolutions adopted by the Governors' Conference, National Association of Attorneys General, National Legislative Conference, National Association of Tax Administrators, and Council of State Governments.

The several witnesses for the States and the associations of State officials support enactment by the States of the Uniform Division of Income for Tax Purposes Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1957. As the name of the act indicates, it seeks to provide uniformity among States in taxation of business income. My understanding is that in the 5 years since it was promulgated, substantial progress has been made in securing State enactments. Ironically, in many States, such enactments were made over the opposition of some who now seek to impose uniformity through Federal standards.

Finally—in a paper already too long—I should like to touch on the difficulties encountered by States in organizing or reorganizing their administrative structures because of conditions and requirements of Federal grants-in-aid. This subject, I might interpolate, Mr. Chairman, was one mentioned by Mr. Colman. Succinctly stated, no one quarrels with provisions prescribing reasonable accounting requirements or performance standards, but the States must object to provisions prescribing how they must organize to perform functions.

Mr. Chairman, this paper consists almost entirely of a listing of what we feel to be problems. They are not insoluble, however. Indeed, we hope that you and your colleagues on this subcommittee will work with the States to solve at least some of them. In conclusion, on behalf of the Council of State Governments, I should like to commend the Senate for its wisdom in establishing this subcommittee and to thank you and your colleagues for your courtesy in hearing us.

Senator MUSKIE. Thank you very much, Mr. Schwan, for an excellent statement.

Now, I would like to call on Mr. William E. Murtha, director of government operations and expenditures program, Chamber of Commerce of the United States.

STATEMENT OF WILLIAM E. MURTHA, DIRECTOR OF THE NATIONAL CHAMBER'S GOVERNMENT OPERATIONS AND EXPENDITURES PROGRAM, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. MURTHA. Thank you, Mr. Chairman.

I am William E. Murtha, director of the national chamber's government operations and expenditures program.

The national chamber appreciates the opportunity to present its views before the subcommittee in the hope that discussions of this type will produce meaningful evaluation of the relationship between Federal, State, and local spending programs.

I think it has been noted that the meeting of this subcommittee is very timely.

Yesterday, the country observed the 175th anniversary of the approval by the delegates to the Constitutional Convention of the text of the Federal Constitution. The question of the relative powers and responsibilities of the Federal, State, and local governments had profound effect on the final draft of that statement. Today, 175 years later, we are still faced with this basic question.

In his fiscal year 1963 budget, President Kennedy called for an all-time high in Federal aid to State and local governments. He asked for nearly \$10 billion for these programs and noted that in the short space of 10 years, this particular area of Federal expenditures had nearly quadrupled. During the same period, it was noted that expenditures by State and local governments have more than doubled.

The budget document for fiscal year 1963 which indicates a rise over the 10-year span from 1953 to 1963 in Federal aid to State and local governments of from \$2½ to \$10 billion, raises important questions.

In the first instance, irrespective of the merit of Federal participation in these programs, there is the question of Federal ability to continue financial participation at this increasing rate. On the horizon of Federal expenditures are the greatly increased costs of space exploration.

We have been told that putting a man or men on the moon may cost as much as \$40 billion. At the same time we are pressed at every turn to remedy each and every defect of our national economy by Federal programs.

Needless to say, the priorities imposed by the space age will be felt in the areas of Federal aid to States and municipalities. To say it another way, the resources of the Federal Government are not boundless and frank assessment of grant-in-aid programs seems inevitable.

For the first time in the history of the country, an administration has had to ask for three increases in the Federal debt ceiling in a single year. This has never before been necessary even in time of war. If there is to be substantial tax reform, as indicated by the President, Federal expenditures in all fields must be closely reviewed.

In this connection, the work of the Advisory Commission on Intergovernmental Relations has been very fruitful in pointing out possible areas for reevaluation and possible retrenchment of grant-in-aid programs. Their recommendations for a periodic review of new Federal grant-in-aid programs should receive broad support. To be completely effective, this type of proposal should call for review of all the existing grant-in-aid programs as well as those that are newly proposed.

The increasing interest and concern over grant-in-aid programs have given rise to the question as to whether or not this should be what might be called a time for reckoning in this area. It is perhaps time to ask whether Federal-aid programs originally intended to stimulate local efforts at improvements in States and localities have, by their very proliferation, tended to blunt that purpose.

We in the national chamber have reason to think that many, both in Congress and throughout the country, believe this to be so.

The national chamber is in full accord with an investigation and study to determine:

The extent to which the purposes for which the specific grant-in-aid was authorized have been met;

The extent to which States and their subdivisions are able to carry on related programs without further Federal aids, as grants, loans, and so forth.

Whether the purpose or direction of the original Federal-aid program is still valid.

I want to assure the chairman and the other members of the subcommittee that the national chamber stands ready at all times to provide information for the committee's studies. The national chamber is in constant contact with State and local chambers of commerce throughout the country and is in a unique position to collect and correlate views on Federal, State, and local problems.

We have attempted, in the time available, to gather information as to specific problem areas in the intergovernmental field foreseen by the various departments in the chamber. We have not received a complete reply at this time and would appreciate the opportunity to supplement this statement at a later date when we have more complete data.

That concludes my prepared remarks, Mr. Chairman.

I thank you very much.

Senator MUSKIE. Thank you.

I don't know how long the record on this particular hearing may be open for the submission of a supplemental statement, but since we will have hearings all fall you will be permitted to present a supplemental statement at those hearings.

Mr. MURTHA. We appreciate that very much, sir.

Senator MUSKIE. Our fifth witness this morning is Mr. Bernard H. Hillenbrand, executive director of the National Association of County Officials.

STATEMENT OF BERNARD F. HILLENBRAND, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF COUNTY OFFICIALS

Mr. HILLENBRAND. Mr. Chairman, with your permission we would like to incorporate in the record our complete statement of opposition to the creation of a Department of Urban Affairs and support for a Bureau of Urban Affairs at the White House level since that is one of the subjects we are very much interested in.

We would also like permission, Mr. Chairman, to incorporate in the record a brief statement in favor of payments in lieu of taxes on certain Federal property. It would seem unfair to hold a hearing on intergovernmental relations without that old favorite being mentioned, but it is a very serious subject, and we would like permission, Mr. Chairman, to have that incorporated in the record.

Senator MUSKIE. Without objection.

(The statements referred to follow:)

EXHIBIT 1

STATEMENT OF THE NATIONAL ASSOCIATION OF COUNTY OFFICIALS

The National Association of County Officials strongly opposes the creation of a Department of Urban Affairs. Over a period of 4 years, we have, on numerous occasions, in small groups and at huge meetings of many hundreds of officials, carefully reviewed the idea of a Department of Urban Affairs and rejected the concept as unworkable and disruptive of our Federal system. Our American county platform statement, approved for the third straight year by our voting

membership, rejects the Department idea and advances an alternative plan as follows:

"1-4. State Intergovernmental Coordinating Agency. Whenever possible, dealings between county and other local governments and the Federal Government should be channeled through an appropriate State agency. We oppose the establishment of a Federal Department of Urban Affairs on the grounds that it would further weaken the States and would tend to create an unwieldy bureaucracy. We recognize the urgent need to coordinate the administration of the numerous Federal urban activities and recommend that a special urban assistant to the President be created to perform that function. He should be provided with a sufficient staff and free access to the Cabinet table. This could develop into a Bureau of Urban Affairs, a staff arm of the President, in the Executive Office of the President, comparable to the Bureau of the Budget, and we recommend, as another method in solving these problems, a Joint Congressional Committee on Urban Affairs."

REASONS FOR OPPOSITION

Proponents of a Department of Urban Affairs have argued that these should be a single agency in the Government where mayors could go to find solutions to their urban problems. While this sounds reasonable in theory, it certainly is unrealistic and completely unworkable. Urban affairs, which have never been, and can never be, clearly defined, cut across the entire face of the Federal Government. The Department of Defense, for example, through its contracting, location, and operational policies, has a profound effect upon urban areas. Local government officials probably make more trips to Washington on military installation closings than on any other subject. It is obviously impossible either to place the Defense Department in the Department of Urban Affairs or to have the Urban Secretary coordinate the internal policies of the Defense Department as they affect urban areas.

Among the activities which many proponents argue should ultimately be transferred to the Urban Department is Federal aid urban highway construction. Highway construction has, since 1921, been a joint Federal-State-local partnership. Urban highway construction is only one aspect of a very complex planning, construction, maintenance, and financial arrangement that has been carefully worked out with the States and localities over a long period of time. To bypass these tested arrangements by transfer of a portion of the responsibility to a completely new agency would be very disruptive. It would cause many more coordinating problems than it would solve.

BYPASSING STATES

The question of bypassing the States has been raised by the proponents in their argument that rural-dominated State legislatures are unresponsive to urban needs. They argue that they get much more favorable attention from the Federal Government than they do from the States. By inference and by actual advocacy, they propose then to bypass the unresponsive State legislatures and deal directly with the Federal Government.

Certainly State legislatures have often been cold to urban needs. In many respects our urban counties have been greater victims than have the cities. Bypassing the States is not the best answer; however, we have only two major Federal programs that involve direct dealings between localities and the Federal Government. These are public housing and urban renewal, and both would be in the proposed new Department. At present, only three States participate in urban renewal and five States participate in public housing. In the case of both public housing and urban renewal, a good case can be made that the program would be stronger if the States did actively participate. Indeed, many proposals have been made to have the States share a greater portion of the responsibilities for these important programs.

BYPASSING OTHER UNITS OF GOVERNMENT

Many of our officials from counties, townships, and other smaller units of government in urban areas have been apprehensive that a new urban department would favor the large central city at the expense of the other units of government located in the typical urban area. Most of the large cities are actually declining very sharply in population. The urban growth has been in smaller incorporations and urban county areas outside the central city. There is fear that if the

central city can deal directly with the Federal Government, there will be less desire to work cooperatively with the other units of government of the area.

It is generally agreed that we must solve our urban problems on a broad regional basis and yet, in some cases in the past, national programs have actually discouraged this broader approach. For example, in the original water pollution construction grant program, each community in an urban area was eligible for a grant of up to \$250,000, and no more for a treatment plant. Under this policy, each community went its separate way, and the much-needed regional approach, which would allow several communities to band together, went by the board. Direct big city-Federal dealings on mass transit, open spaces, and similar programs could easily disintegrate into similar "go it alone" policies.

OFFICE OF THE PRESIDENT APPROACH

Our counties are deeply involved in urban problems and are most anxious to see a well-coordinated national approach to their proper solution. We feel that because urban problems do cut through nearly every Federal agency and all of State and local government, it is impractical to center this direction in a single department of Government. We believe that this direction is so important that it should be at the highest level of the National Government; namely, in the Office of the President.

Again, we would offer as documentation our national experience with the executive budget process. Originally, the budget function was located in the Treasury Department. It proved unworkable. Budget, finance, and policy considerations cut across the whole Government and obviously a single Cabinet officer could not coordinate the work of his fellow Cabinet officers. The budget function had to be elevated to the Executive Office of the President. It became the staff arm of the President, and anyone familiar with Washington knows that the Director of the Budget is one of the most powerful positions in the entire Government.

We would strongly advocate the same procedure for urban affairs. A Special Urban Assistant to the President with a small Bureau of Urban Affairs could (1) study and recommend national urban policies for consideration of the President and Congress, (2) coordinate the urban activities of the executive branch of the Government, (3) work with the individual States and localities to supplement rather than to supersede their individual urban efforts, (4) identify and assign, to individual functional departments, urban research projects, and (5) work with business, labor, and other groups having a vital interest in urban affairs. We would also submit that urban problems deserve such a high priority of consideration that we would recommend that Congress consider creation of a Joint Congressional Committee on Urban Affairs similar to those on the Economic Report and Atomic Energy. We would also urge a much wider role for the congressionally created and Presidentially appointed Advisory Commission on Intergovernmental Relations. This Commission has broad representation from the Congress, the executive establishment, States, cities, counties, and private citizens. Much very fine work has already been accomplished by the Commission, and much more is contemplated for this important national forum.

Thank you for the invitation to present our views on this vital subject.

EXHIBIT 2

PAYMENT IN LIEU OF TAXES

[A Special Report Submitted by Section on Local Government Law, Committee on Liaison, National Institute of Municipal Law Officers]

(American Bar Association 85th Annual Meeting, San Francisco, Calif.)

The Federal Government's ownership of vast and varied holdings of property covering one-fourth of the country, including personal as well as real estate, has created, among other things, a grave problem to local government. Under the intergovernmental tax-immunity doctrine, all Federal property is immune to ad valorem taxation, the chief source of revenue of State and local government. This Federal immunity has been the source of widespread complaints from local governments and the cause of repeated and growing hardships.

SUMMARY

This committee has undertaken to review the situation relating to the Federal immunity to property taxation and to recommend to the American Bar, policy and implementing action it could endorse, and in turn recommend to the Federal Government as a method of meeting their problems. A review of these problems is not a novel undertaking; however, to our knowledge, it is not a subject that has ever formally been considered by the American Bar Association. The search for satisfactory answers has been going on for years. In 1935, a Presidential committee (Secretary of the Treasury, Attorney General, and Acting Director of the Bureau of the Budget) was appointed to study the problem. In 1939 the Federal Real Estate Board was established to investigate the situation; and, in 1941, a special committee of the Treasury Department examined the question. All these groups filed reports with recommendations for action. In a 1949 conference of Federal, State, and local officials, concerned with intergovernmental fiscal relations, it was agreed that the Bureau of the Budget should develop comprehensive recommendations for dealing with the problem. The result was a draft bill designed to establish a more uniform treatment of similar Federal properties according to certain basic principles.

In 1955 a study committee on payment in lieu of taxes of the Commission on Intergovernmental Relations, often referred to as the "Kestnbaum Commission" was submitted to the President. This is perhaps the most complete report ever prepared on this subject. Its comprehensive treatment of the subject combined with limitation imposed in the preparation of a report such as this has produced in effect a distillation of the above referred to document.

The basic object of this undertaking is to secure substantial equity as between Federal and local taxpayers.

A guiding consideration, among others, is that the cost of local government allocable under the property tax system to an item of federally owned property should be borne by the Federal taxpayer if the property serves primarily a national or broad regional purpose and conversely, by the local taxpayer if the property serves primarily a local purpose.

Federal properties devoted to uses comparable to those made of private properties appear, in general, to deserve the same obligation of supporting local government and the same exemptions from this obligation as similar privately owned properties. Furthermore, practical considerations suggest both that property long in Federal ownership and immune from payment requirements should not now be obliged to contribute to the costs of local government and that existing arrangements for Federal payments which have been operating to general satisfaction should be left largely undisturbed.

Although for most Federal properties the Federal Government makes no contribution to the support of local government; it does, under existing statutes, make payment for some of its properties. These payments variously take the form of tax payments, administratively determined payments in lieu of taxes, and a sharing of income receipts from operations on Federal properties.

It is concluded that the solution best suited to this problem can best be found within the framework of the considerations germane to the property tax. This, however, is subject to some limitations. These limitations spring from several factors: The diverse character of Federal properties and the variety of uses to which they may be put, some serving primarily national and others primarily local purposes; the varying service burdens of different Federal properties on State and local governments and, conversely, the varying service benefits which they confer on those governments to lighten the costs of supplying local public services; the similarity and contrasts in uses made of Federal properties to uses made of private properties, with some Federal properties resembling and others differing from properties comprising the property tax bases of most local governments; and the varying effects of Federal acquisition of different properties upon local tax bases, with some properties predating the Republic itself and others acquired intermittently during the intervening years with the consequence that different communities and the owners of taxable properties within their borders have had varying times to adjust, insofar as this is possible, to the presence of Federal properties.

The twin doctrines that the Federal Government may not tax State and local governments and that State and local governments may not tax the Federal Government and its instrumentalities, developed in the wake of Chief Justice

Marshall's opinion in *McCulloch v. Maryland*. The problems in this area of major importance today may conveniently be grouped into several categories:

1. The status of Federal property under State and local property tax laws;
2. The status of Federal contractors under State and local tax laws;
3. The status of private persons and activities in Federal areas under State and local tax laws;
4. The status of State and local activities under Federal tax laws; and,
5. The status of State and local securities under Federal tax laws and of Federal securities under State and local tax laws.

This report is confined to the first of these, the tax status of Federal property.

BACKGROUND OF PROBLEM

The property tax has traditionally been the chief source of revenue for most local governments in the United States. Diminution of the property tax base by the accretions to the category of tax-exempt properties poses a serious problem to the public finance capabilities of many communities. The Federal Government owns almost one-quarter of the total land in the country. However, the value of neither realty nor personalty owned by the Federal Government is known. The crux of the problem is the distribution of the Federal holdings rather than the mere totality.

If Federal properties represented a reasonably uniform proportion of taxable property in each of the thousands of local taxing units throughout the country, no urgent problem would arise out of the immunity of Federal property to local taxation. To be sure, payment of the costs of local government fairly allocable under the property tax system to the Federal property would be borne by local taxpayers rather than by Federal taxpayers. But the equality of Federal load on all communities and the general distribution of Federal taxpayers would presumably mute local dissatisfaction and agitation for change in the tax status of Federal property.

Actually, however, Federal holdings are very unevenly distributed. Areawise, 11 States have within their boundaries more than four-fifths of the federally owned lands; each of 5 States has less than 1 percent. Within the States distribution of Federal property among taxing districts is probably even more disparate. Distribution statistics reflecting values of Federal properties do not exist. However, the effects of the uneven distribution of Federal properties are, no doubt, compounded when consideration is given to the scattered locations among local government areas of highly developed Federal industrial plants with their valuable machinery, equipment, and inventories of goods.

Although information regarding the total revenues which States and localities would receive by taxing all Federal property is not an accurate gage of the problems involved in the immunity of Federal property to taxation inasmuch as it does not show the impact of Federal holdings upon individual communities, it would nevertheless be helpful. Specifically it would provide the answer that Congress invariably and justifiably asks when it considers any problem—the cost. It would require on a nationwide basis an inventory of Federal property, comparable data on the relationship of assessed to true value for tax purposes, and data on tax rates—none of which exist to any extent.

It may be observed in passing that the highest estimates of the potential yield to localities from taxing Federal properties indicate sums which are only a fraction of the total financial grants and other payments now being made by the Federal Government to States and localities. Federal grants-in-aid alone totaled an estimated \$7,905 million for the continental United States during fiscal 1962. These payments, of course, are not made as substitutes for property taxes. They rest upon a national interest in promoting or facilitating specific types of activities by States through the Nation rather than upon Federal responsibility as a local property owner. Indeed, in most cases the Federal grants-in-aid are distributed to States and communities without reference to the location of Federal property, and the financial assistance is available to communities where Federal property may be negligible or nonexistent.

GROWTH OF FEDERAL PROPERTIES AND LOCAL DISSATISFACTION

Historically, the problem of whether the Federal Government should contribute to the support of local or State governments because of its property holding arose primarily in the Western States containing most of the public domain. Most

of these lands, however, had never been part of the local taxing jurisdiction, and communities, along with their land values and public financing arrangements, had grown up around the fact that the Federal lands were not subject to taxation. The problem of Federal immunity acquired a new aspect, however, through the enormous growth of Federal property ownership in the past 20 years out of programs involving housing and resettlement, expansion of national parks and forests, and vast land acquisitions for irrigation, flood control, reclamation, and power developments. Much of this growth enveloped lands previously on local tax rolls resulting in a depletion of the property tax base, however, in many instances raising the value of the surrounding property that was still on the tax roll.

Finally, the national defense program, starting in 1939, greatly increased the value of Federal property holdings through new acquisitions for military camps, training areas, forts, airfields, and especially for industrial plants and facilities. A new and wider geographical concern with the tax-immune status of Federal property developed. Even more significantly the problem assumed an urban as well as a rural complexion. Industrial plant acquisitions were concentrated in urban areas and often reduced the local property tax base. In addition to acquisition the Federal Government constructed many new industrial plants and facilities. Notwithstanding the desirability of varied economic benefits that accompany an industrial facility, these installations constitute a type of property traditionally subject to local taxation. They are, in fact, a vital part of the property tax base in most communities since the revenues derived from taxation of industrial plants greatly exceed the cost of providing local public services to them as compared with taxes upon and services rendered to residential property.

Oftentimes the argument is advanced that the mere presence of a Federal installation whatever its nature is of a general economic benefit to the community and therefore, offsets any failure to make a tax payment on account of the property. However, general economic benefits have no relevance under the property tax system to obligations arising from the ownership of property. To recognize such offset for the Federal property owners would logically require a similar concession to private industrial property owners, since all industrial property generates general economic benefits.

With respect to plants producing goods for the Federal Government, a variety of situations may exist in any community. (1) A privately owned and operated plant might be producing such goods; (2) the Federal Government might own a plant which, under the control of the Defense Department, is leased to a private operator who produces goods for the Government; or, (3) a federally owned plant operated directly by the Federal Government or its contractor-agent might be producing goods for the Government. All of these plants could be physically and valuewise identical, all producing the same goods in the same general way and for the same ultimate use. They could all employ laborers residing in the same community. All the plants and all the laborers working in each plant could receive the same public services provided by the local government. Plants of the first two types could be in competition with each other in producing goods for the normal civilian market, as well as for the Federal Government. Yet despite the similarities in operations and economic effects, the tax liabilities of these plants would be completely diverse. Under present law the first plant would be subject to full property taxation; the second plant would be subject to taxation of its real property, but not of its personal property (machinery, equipment, and inventories); and the third plant would be completely tax immune.

Lack of uniform tax requirements respecting all these plants has strained both logic and fairness. This opinion is reinforced by the fact that in some of these plants there are both private and Federal realty, as well as an intermingling of privately owned and federally owned machinery and equipment, all engaged in a single, integrated production process. Here taxation of some of the property and exemption of the rest not only seems illogical, but in the case of the intermingled tangible personalty, operation of the Federal tax immunity has imposed the onerous obligation upon local tax assessors of separating the taxable goods from the nontaxable and has increased opportunities for private owners to escape taxation of some of their tangible personalty.

PRESENT FEDERAL CONTRIBUTIONS

There is precedent for the Federal Government assuming some financial responsibility by reason of its property holding. This has taken these general forms:

1. *Revenue sharing.*—This is an arrangement under which a specified percentage of income received from operations on certain Federal properties is paid to States or localities and has been applied to a variety of holdings, such as oil and gas lands and national forests. Authorizations to share revenues are derived from numerous individual statutes and percentages paid range from 5 percent to 50 percent (and possibly 75 percent).

2. *Payments in lieu of taxes.*—In some cases statutes authorize payments to States or local units based on the value of the Federal property or the cost of local public services rendered to it or to persons occupying it. In others, they are based on tax equivalents with adjustments for burdens and benefits conferred on the community by the Federal property, the amount of such services supplied by the property to the community, and other factors. Specific statutory provisions are variable. Some require payments; some merely permit payments. Generally, the amounts paid are established by negotiation and agreement between the Federal property-owning agency and the State or local government, but the final authority is the Federal agency. This type of Federal payment has been utilized especially for housing properties of the Housing and Home Finance Agency, but has also been employed for certain national forests, Atomic Energy Commission properties, surplus properties, and certain reclamation properties.

3. *Consent to ad valorem tax liability.*—The properties affected have been principally those acquired by foreclosure or other processes to protect the Federal financial interest in them arising out of Federal lending operations. Such property is generally intended to be held by the Federal agencies temporarily pending disposition to private persons. The Federal ownership is usually a mere interlude between ownership of the property by private persons. The Federal consent to taxation of this property recognizes the undesirability of a temporary removal of the property from the tax rolls.

These present arrangements for Federal payments have developed in a more or less unrelated way out of the provisions of 50 or more separate statutes. They are the result of compromise and expediency and are lacking in a common principle and to a certain degree expand the unequal burden on different local governments.

GUIDING CONSIDERATIONS

The basic premise of this report is that Congress should consent to make a contribution of some type to the cost of State and local government because of the presence of Federal property.

The objective is to find a solution to the financial difficulties experienced by local governments arising out of the tax-immune character of Federal properties, which would be both appropriate to all the diverse situations in existence and compatible with basic concepts which have been a part of our constitutional fabric; i.e., the doctrine of intergovernmental tax immunities.

Any solution must be guided by a statement issued by the Federal Real Estate Board in its report on this subject.

"The cost of national functions and programs should not impose an undue burden on local taxpayers through Federal tax exemptions; neither should the Federal taxpayer be required to support unjustified subsidies to the localities containing Federal lands."

This objective is consonant with another of prime importance; namely, the maintenance of sound governments at all levels of our Federal system. Cognizant that it is primarily the local governments which have protested the existing situation, the committee proceeds from the compelling need to maintain robust local governments.

The following considerations provide what is seemed fair and reasonable guides to an equitable solution. They are neither immutable nor dogmatic. All of them should be considered in their general context and relationship with each other:

1. The diverse characteristics and contrasting uses of Federal properties and their varying burdens on local governments preclude a single uniform rule for determining the extent to which Federal property should contribute to the support of local government. It appears that for some types of properties payment is desirable; for others payment is inappropriate.

2. The principal basis for distinguishing between Federal properties which should contribute to the costs of local government and those which should not is the use made of the property.

3. It is generally fair that the costs of local government allocable under the property tax system to an item of federally owned property should be borne by

the Federal taxpayer if the property serves primarily a national or broad regional purpose and conversely by the local taxpayer if the property serves primarily a local purpose.

4. Federal properties devoted to purposes which are of a type customarily the subject of private activity or concern should pay their fair share of local government costs without reference to whether they serve a national, regional or local purpose.

5. Practical considerations suggest that property long in Federal ownership and immune from payment should not now be required to contribute to the costs of local government. Some general cutoff date is appropriate.

6. Practical considerations suggest also that existing arrangements for Federal payments which have been operating to general satisfaction should not be disturbed.

7. Property used or held primarily for purposes for which property is generally exempt from taxation under the laws applicable in the taxing jurisdiction should likewise be exempt from any payment obligation in Federal ownership.

8. With respect to special assessments to finance improvements for the benefit of adjoining Federal and private property, Federal property should be treated on the same basis as private property and accorded the same safeguards and exemptions.

9. Generally, the foregoing considerations contemplate no distinction between real and tangible personal property.

10. Federal property and persons either living or working thereon should receive local public services on the same basis as those generally provided to other properties and persons in the community.

GENERAL APPROACH TO SOLUTION OF PROBLEM

With the foregoing considerations in mind, we considered various approaches by which the Federal Government might, on account of its property holdings, contribute to the support of local government.

1. Payment of taxes on Federal property as determined by local tax officials according to local tax laws.

2. Payments in lieu of taxes based upon tax equivalents with or without offsets or other payment limiting factors.

3. Payment of taxes or tax equivalents on that portion of Federal properties in a community exceeding a specified percentage of all property in the community.

4. Service payments, or payments for local public services received by the Federal property or persons living or employed on it.

5. Per capita payments, or payments of a fixed or calculable sum for each person living or working on the Federal property within the area of the local government.

All approaches not involving submission of Federal property to direct local taxation may be considered as payments in substitution of or in place of taxes. However, only the second of the above-enumerated possibilities is designated in this report as a "payment in lieu" of taxes.

The arguments pro and con for the various approaches are not presented herein; however, they are considered in the recommendations made by the committee. They are also set forth in considerable detail in the full "Study Committee Report." Briefly the essence of the approaches are as follows:

1. *Tax approach.*—Select those types of federally owned properties which should share in the costs of supporting local government and consent to their taxation by local governments in accordance with the tax laws of each community.

2. *Payment in lieu.*—This is a modified tax approach. It concedes the propriety of determining the Federal share of local government costs by reference to the value of the Federal property in the locality, but would employ machinery other than the local taxing authority for fixing the Federal share. Such payments could fall into either of two categories: (1) Payments of amounts equivalent to taxes, and (2) payment of tax equivalents reduced by certain offsets and/or the operation of certain formulas.

3. *Payments on excess Federal properties.*—The central idea of this approach is that a system of Federal payments should be coupled with recognition that every local community should bear without claims on other communities (via a Federal payment) the costs of local government attributable under the property tax system to that amount of Federal property in the community which is

equal to the average amount of Federal property contained in all communities throughout the Nation. The system thus avoids what might appear as the mere transfer of funds among communities. Federal payments would be made only on Federal property valuations exceeding the average community load.

This approach is best illustrated by the method used in Canada. There all national property (with certain exclusions) exceeding in value 4 percent of the total property valuation in any municipality is subject to a payment in lieu at the discretion of the National Minister of Finance not to exceed roughly three-fourths of what the local tax on the properties would be. The specifics of this plan could be altered. The system could be coupled with tax liability on the excess property or with a payment-in-lieu obligation. If a payment-in-lieu technique were designated, it could be made either mandatory or permissive, either subject to offset or not, and subject to appeal just as any other payment in lieu.

4. *Payments for specific services.*—This approach would identify certain services to the Federal property or to persons living or working on it and make corresponding payments to local governments. This approach avoids Federal responsibility for payments within the framework of the property tax system and concentrates upon Federal support of services, which merit Federal encouragement or have a special value or relevance to the Federal property and its operation.

CONCLUSIONS

The committee endorses and recommends many of the solutions and recommendations proposed by the "Study Committee Report," and its basic premise that the solution must be found within the framework of considerations germane to the property tax system.

The problem is one created by the immunity of Federal properties to State and local taxation and its solution should be one bearing a rational and explainable relationship to the results which would follow if Federal properties were subject to these taxes.

The committee would require centralization of responsibility for all Federal payments in a single Federal agency. The committee would prefer that each Federal property-holding agency be required to make payments for its properties from its funds so that each agency in budget requests to Congress would be under a continuing duty to justify its holdings and under a continuous pressure to keep them at a minimum.

Although the committee's basic conclusion is that the solution to the problem may be found only within the framework of property tax consideration, it is nevertheless aware that the property tax criterion as a measure of the amount of the Federal property owner's responsibility to contribute to local government support is subject to some limitations. These limitations spring from the diverse character of Federal properties, the variety of uses to which they may be put in serving primarily national or local purposes, the similarity or contrast of these uses to uses made of private property, the differing service burdens of different properties on State and local governments arising partly from the self-service of certain Federal properties, the varying effects of Federal acquisition of different properties upon local tax bases, and from other factors. The effect of these limitations is to suggest, for some types of properties, the impropriety of requiring any Federal payment whatsoever. For others, they suggest the propriety of modifying any tax equivalent amount in order to give effect to historical, practical, and theoretical considerations irrelevant to private property, but intimately bound up in Federal property.

RECOMMENDATIONS

Documentation of individual cases of hardship are legion and have not been one of the facets of this report. It has been primarily to state the case in rather broad and general terms, setting forth not only background material, but guiding principles, various approaches, and finally recommended action. Certainly the proposal following recommendations are not the only route that could be taken. These specific recommendations have been previously proposed in one form or another and have formed the basis of legislation that successfully cleared one body of Congress. This was Senate bill S. 910 which passed the Senate May 12, 1962. However, they do embody what in the opinion of the committee is the most realistic, practical, and basically equitable approach that has yet to be formulated.

Recommendation 1.—It is first recommended that Congress enact a joint resolution declaring that it was Congress' intent to prevent hardship upon local government resulting from the tax immunity of Federal property.

Recommendation 2.—The Federal Government should consent to the payment of special assessments to finance local improvements where both non-Federal and Federal properties are included in the benefited district and subjected to the assessment, provided that Federal property is treated on the same basis and accorded the same safeguards and exemptions as non-Federal properties.

Such special assessments are essentially land service charges for particular improvements which enhance the value of the property.

Recommendation 3.—In pursuance of recommendation No. 1, it is recommended that Congress authorize a program undertaking a systematic appraisal and study of the cost involved in making payments-in-lieu of taxes of the following category of federally owned property with the view in mind of initiating such payments, (a) property leased to a taxable third party that is being used in a commercial or industrial capacity, including properties employed by private contractors or subcontractors in the performance of contracts with the Federal Government, title to which has passed to the Federal Government pursuant to any partial or advance payment contract clause; (b) properties being utilized by the Federal Government itself in a commercial or industrial capacity; (c) properties used or held for activities which serve primarily national or broad regional interests rather than those of the local public; and (d) rental housing other than low-rent housing.

Such a study should be guided by the following restrictions and principles. The payments in lieu of taxes should be equivalent to the amount of taxes which would be assessable against the property if taxable according to its value as determined by the established tax procedures of the taxing jurisdiction, including all provisions for administrative and/or judicial review of assessments, tax rates, or levies in accordance with applicable laws governing assessments and taxation, provided that Federal property is treated on the same basis and accorded the same safeguards as non-Federal properties. Payments thus established should be adjusted as follows:

(1) Reduced for the local cost of specific and customary State or local governmental services provided at Federal expense to the taxing jurisdiction or its residents, or the Federal property, or Federal employees and their families who reside within the taxing jurisdiction. The amount of this reduction should be based on the unit cost of the particular services to the taxing jurisdiction, or in the absence of such unit cost data should be based on the unit cost in comparable nearby taxing jurisdictions.

(2) Increased by the amount of the expenditures incurred by the taxing jurisdiction in providing specific services to the Federal property which it does not customarily provide to non-Federal properties.

(3) Where property of more than one Federal owning agency is located within the taxing district adjustment should be made.

(4) And the previous listed 10 considerations that are to a great extent embodied in the foregoing three principles.

Upon completion of the study (not more than 2½ years should be allowed for its completion) the findings will serve several useful purposes. It will initially demonstrate Congress concern and interest in the increasing Federal ownership of property and the accompanying problem. It would provide the rather specific financial estimate as to how much a program would cost, something that is almost mandatory before Congress would act.

Lastly, it could also provide the case files for the actual payment to local government once a program was inaugurated.

Recommendation 4.—Payment should not apply to properties acquired by the Federal Government before a certain date (September 8, 1939) or (July 1, 1950) unless Congress has specifically authorized the payments of property tax or payment-in-lieu of taxes on account of such properties. This factor of course should be considered in carrying out recommendation No. 3.

Not only equity but practical consideration prevents payments on properties whose noncontributory status has become integrated into the economic and fiscal life of the community. On properties long in Federal ownership local tax rates and land values have grown up around the Federal tax immunity. Adjustments have been made. Equity requires no molestation of such cases.

The alternative of "cut-off dates" of September 8, 1939 or July 1, 1950 are recommended as dates coinciding with the commencements of national emer-

gencies, and in both cases may be taken as the starting time of an enormous expansion of Federal property ownership accompanying the national defense program.

Recommendation 5.—That the American Bar Association make known its vital interest in this problem by endorsing the previously stated recommendations and relay them to Congress and to the President of the United States. In doing so, the American Bar Association would offer its services and that of its various sections in assisting in carrying out these recommendations.

Mr. HILLENBRAND. And also, Mr. Chairman, again the subject of apportionment has come up, and you gave a very brilliant statement on apportionment at our annual meeting in New York City. We endorse that statement and we would like to have that incorporated in the record of this hearing with my brief remarks here.

Senator MUSKIE. If the other members of the subcommittee have no objection we will incorporate it.

(The statement referred to follows:)

EXHIBIT 3

ADDRESS BY SENATOR EDMUND S. MUSKIE BEFORE THE NATIONAL ASSOCIATION OF COUNTY OFFICIALS, STATLER-HILTON HOTEL, NEW YORK, N.Y., MONDAY, JULY 9, 1962

WHAT THE SUPREME COURT DECISIONS ON REAPPORTIONMENT MAY MEAN TO AMERICAN GOVERNMENT

Ladies and gentlemen, when your president, David Bird, first asked me to talk about the significance of the historic Tennessee reapportionment decision, I confess that I was flattered by his implicit compliment.

It wasn't until I started digging into the assorted arguments and viewpoints of the Supreme Court on this question that I began to suspect he had done me no favor.

I suffered the same kind of misgivings I felt once on a brief airplane trip. I was sitting behind two mathematicians—or perhaps they were nuclear scientists—who were analyzing a pamphlet they had with them. I could see the document contained nothing but strange equations, algebraic symbols and mysterious columns of figures. One of them finally turned to the other and said, "He certainly writes with a flair, doesn't he?"

Putting aside the legal citations, however, I believe the only real mystery in this issue of unequal representation among State legislatures is why our citizens were not spurred to corrective action long ago. On most questions involving rank misrepresentation the American people have a fairly low threshold of indignation.

I recall an actual experience which not only bears on this quality in our citizens but also illuminates at least one potential hazard in the Supreme Court decision.

I once belonged to a veterans' club of some pretensions and some wealth which had been controlled by a ruthless old superpatriot known as Uncle Joe. The time came at last when the younger members developed enough sophistication—and votes—to dethrone the old boss at their annual State convention.

As the rollcall of voting began to unfold the awful truth, the old man claimed the floor on a point of personal privilege. "You can't do this, boys," he thundered. "This is mob rule."

The answer came from a voice in the crowd. "That's right, Uncle Joe, but it's a new mob."

I don't really believe we are going to see mob rule in many of our legislatures but we are likely to see a new mob. The fact is, of course, that all active citizens are concerned about maintaining the United States as an effective working democracy.

Each one of you here, either as individuals or in your group identity as the National Association of County Officials would react with indignation and outrage if your right to vote were suddenly suspended or taken from you. The traditional hallmark of American democracy has been its reliance on the will and wisdom of the people, expressed through the secret ballot in open elections.

Yet, as I intimated a moment ago, the perversion of our basic right to vote seems to have evoked a far less active sense of outrage—at least until recently. As a matter of fact, unequal representation is one of the most flagrant and persistent perversions of a basic American right ever to occur in our history. We have tolerated this abuse for decades.

Up until 1958 more than half of all the States had failed to reapportion even a little bit over a period 25 years. Two States, Alabama and Tennessee, had not acted on this issue since 1901.

There are endless examples of political imbalance. A representative of one rural Alabama district speaks for 7,000 people while a colleague from an urban district represents 105,000 using 1960 census figures. In Tennessee the 2,340 qualified voters of Moore County elect the same number of Representatives—1—as do 44,621 qualified voters of Shelby County.

Ten years ago in Connecticut, 1 district in the lower house contained 88,000 people who elected 2 Representatives while another with 180 people also elected 2 Representatives.

It has been the extension of this pattern in many States giving political dominance to rural minorities at the expense of urban majorities, that has perverted the patchwork of our voting representation.

Ironically, this was not always the case. When the struggle for equal representation first started, early in our country's history, the major contests centered in Virginia and Pennsylvania where the urban residents of the eastern sections were heavily overrepresented at the expense of rural residents.

Thomas Jefferson—to whose seemingly inexhaustible range of foresight and wisdom we are able to turn on almost any political question—gave his home State of Virginia a clear warning: "It is important," he said, "to strengthen the State governments * * * (but this) must be done by the States themselves * * * the only barrier in their power (against central government) is wise government. A weak one will lose ground in every contest. To obtain a wise and safe government, I consider the following changes as important: render the legislature a desirable station by lessening the number of Representatives * * * lengthening somewhat their term, and proportion them equally among the electors."

Elihu Root who came long after Jefferson but still preceded the era of heavily centralized government was another great statesman alive to the peril of diminishing State authority. "It is useless," he said, "for advocates of States rights to inveigh against the constitutional laws of the United States or against the extension of authority in the fields of necessary control where the States themselves fail in the performance of their duty. The instinct for self-government among the people of the United States is too strong to permit them long to respect anyone's right to exercise a power which he fails to exercise."

Historical irony seems to be ever with us. We finally corrected our early imbalance of urban power only to see the scales tip toward an imbalance of rural power as the industrialization of America and the growth of our cities destroyed a precarious equilibrium based on the calibrations of a social order that has disappeared.

But why, you may well ask, has this issue failed to capture the imagination of the American people whose traditions of liberty and fair play have almost always in the past assured a prompt and vigorous response to most forms of misrepresentation?

I suggest this heritage of imbalance has persisted for several reasons.

It has persisted because the concept of unequal representation is far more difficult to grasp than the clear denial of individual voting rights.

It has persisted because too few of our citizens are alive to the impact and authority of State legislatures in their lives.

It has persisted because the rural minority in many instances has clung to its State political domination as an act of self-interest through intentional neglect—fortified, I might add, by the popular image of rural America as the fountainhead of our national strength and rugged individualism.

It has persisted, in short, because, even in a democracy, political power is rarely surrendered voluntarily.

Yet the problem has not been wholly ignored. It has been under more or less constant discussion for years, especially in the cities where the denial of electoral equity has been most keenly felt if not resented. During this long-simmering ferment the opposition has grown gradually louder and more insistent—and more broadly based—until on March 26 of this year the issue finally exploded in the Supreme Court of the United States.

The decision handed down in the case of *Baker v. Carr* loosed a storm of emotion, comment, publicity, praise and criticism which in just 3 months has already jolted the political leaders of at least 10 States out of the 19th century and squarely into the present.

The dust has not yet settled and there is still wide public disagreement on both the importance of the decision and whether its net effect will be good or bad. But the truly amazing speed with which the decision is being implemented from one end of the country to the other does give us some indication of its ultimate impact on the structure of State government.

Before we try to analyze this impact, however, it is useful to have a clear understanding of exactly what the Court said and what it did not say.

In their suit, the petitioners who were qualified voters and taxpayers in Tennessee claimed their constitutional entitlement to equal protection of the laws—guaranteed by the 14th amendment—had been violated by the inequality of Tennessee's legislative apportionment. In simple terms, the rural one-third of Tennessee's population elected two-thirds of the legislature, controlling it to the detriment of the urban majority. The petitioners' votes, they said, were worth only one-tenth those of some rural voters.

The Supreme Court's verdict was 6 to 2, but six different justices rendered opinions which total 165 pages covering the matter from every conceivable angle. But it is the majority opinion of Justice Brennan which represents the law, and it is that opinion with which we must concern ourselves.

In a cautious and detailed opinion, the Court held only:

(1) That Federal courts have jurisdiction over the subject matter of legislative apportionment and districting;

(2) That the petitioners were competent to challenge the Tennessee apportionment statute, or, in other words, that they had "standing" to bring the case.

(3) That the complaint stated a "justiciable" cause of action, or, in other words, that the case was one which could be properly heard and decided by a court of law.

With respect to the question of jurisdiction, the Court's decision was simple and logical. Article III, section 2, of the U.S. Constitution concerns the jurisdiction of Federal courts, and it states that the "judicial power shall extend to all cases, in law and equity, arising under the Constitution. * * *" The petitioners alleged that the Tennessee statute deprived them of equal protection of the laws in violation of the 14th amendment which is a part of the Constitution. Thus the case is one "arising under (the) Constitution" and is within jurisdiction of Federal courts.

This was consistent with previous decisions in this area. The Supreme Court has never ruled that Federal courts do not have jurisdiction over the subject matter of apportionment or districting.

The question of "standing" was also easily disposed of by the Court. It is a well-settled precept of constitutional law that a Federal court cannot declare any statute, State or Federal, to be unconstitutional unless the question is presented in the form of an actual controversy between parties who have direct personal interests, in the outcome. The Court cited previous decisions which held that voters who allege facts showing disadvantage to themselves as individuals have standing to sue. Since this is precisely what the 11 Tennessee voters alleged, they clearly had sufficient "standing" to institute the action, which was, quite obviously, an actual controversy between parties with direct personal interest in the outcome. And, as the Court said, "A citizen's right to vote free of arbitrary impairment by State action has been judicially recognized as a right secured by the Constitution. * * *"

The real crux of the case was in the Court's holding that the problem of legislative apportionment was a "justiciable" question. Webster defines justiciable as meaning "liable to trial in a court of justice," and that is really as accurate a description as we can hope for.

It has long been a settled constitutional doctrine that certain political questions are nonjusticiable and therefore not susceptible to trial in a court of justice.

But deciding just what does or does not constitute a political question is one of the most difficult problems in constitutional law.

Time does not permit such an analysis here, but I think it fair to say that the Court has identified certain general characteristics which, if present in a particular case, make it a "political question" and thus nonjusticiable. Some of the characteristics are—

(1) A clear delegation of authority to another branch of government by the Constitution.

(2) The impossibility of a court's undertaking independent resolution of the problem without expressing lack of the respect due other equal branches of government.

(3) A lack of judicially discoverable and manageable standards for resolving the question at hand, or,

(4) Potential embarrassment of the United States by different pronouncements on the same problem by the various branches of government.

Most cases in this area are concerned with the doctrine of separation of powers and deal with the relationship between the three equal branches of the Federal Government—the executive, the legislative, and the judicial. These cases do not concern the relationship between the Federal judiciary and the States, as did the *Tennessee* case.

Examples of such cases would be the conduct of foreign relations, which is committed by the Constitution to the executive and legislative branches. Thus, ordinarily, recognition of foreign governments and their proper representatives, determining when a state of war begins and terminates, or when a treaty has been terminated, are political questions which will not be entertained by the courts for the reasons stated earlier.

Those cases which have dealt with the relationship between the Federal judiciary and the States have arisen primarily under the guarantee clause of the Constitution.

The clause is contained in article IV, section 4, of the Constitution which says that the "United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasion * * *" from its earliest decision on this question down to the present time, the Supreme Court has consistently maintained that the executive and legislative branches of the Federal Government are charged with responsibility to the States under the guarantee clause.

The Court has repeatedly held that challenges to State action based solely upon that clause are political questions and are nonjusticiable, not simply because they were based upon the guarantee clause, but because the particular questions involved in each instance had such characteristics that clearly identified them as "political questions" not susceptible to trial in a court of law.

An example of this was the famous case (*Luther v. Borden*, 48 U.S. 1) arising out of the near rebellion which occurred in Rhode Island in 1841 and 1842. There were two rival State governments, each claiming it was lawful. The President recognized one of them and the Supreme Court refused to decide a case which called for a decision as to the validity of one or the other government. The Court held that there were simply no legal standards by which it could judge the two governments and upheld the necessity of accepting the President's decision as final.

This is an important point in understanding the legal basis underlying the Court's decision. In his long and sharply worded dissent, Mr. Justice Frankfurter argued that the question posed by this case could not be answered without first determining whether or not Tennessee had a republican form of government. Since this would clearly be a "political question" having to do with the organization of State government and would thus be outside the realm of the courts, Frankfurter contended that the *Tennessee* case was nonjusticiable.

Indeed he argued that this case really was a guarantee clause case. He said that "the present case involved all of the elements that have made the guarantee clause cases nonjusticiable. It is, in effect, a guarantee clause claim masquerading under a different label."

The majority opinion went to great lengths to demonstrate that the previous decisions holding cases brought under the guarantee clause to be "political questions", were based upon the existence of one or more of the general characteristics which I set forth a moment ago, and were not based simply upon the fact that they concerned the organization of State government. In support of this reasoning the court cited several cases which dealt with problems of State government which were held justiciable and were decided upon their merits.

It is also important to keep in mind the particular facts of the *Tennessee* case and to remember that all judicial decisions, especially Supreme Court opinions, must be read with reference to the facts which give rise to the controversy. Thus, in Tennessee, there is no provision for direct popular action by initiative or referendum. The Tennessee Legislature has for over 60 years refused to reapportion every 10 years as called for by the State constitution. And a State constitu-

tional convention was not an available remedy, because such a convention could only be called by a majority vote of two successive legislatures.

While it is impossible to determine what influence, if any, these factors may have had upon the Court's decision, there is no certainty that the decision would have been the same if these factors were not present. The only sure thing about the Supreme Court is that you can never predict with certainty what its decision will be.

Although the Court established no guidelines for the future, it is clear that mathematically precise equality is not required. Justice Stewart was quite correct when he emphasized in his concurring opinion that "the 14th amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others."

But this also raises more questions than it answers.

At what point, we may ask, does representation become unbalanced enough to require judicial intervention? The Idaho courts, for example, have already ruled that it is all right for 56 percent of the people to have only 36 percent of the representatives and 18 percent of the senators in their legislature.

Must population be the measuring stick for both houses, or may some other method—such as geography—apply in one house?

A Federal court in Georgia has hinted that "at least one house must be selected by population. But the Maryland Court of Appeals has hinted that population may be the standard required there for both houses.

What will a court do if a legislature refuses or fails to reapportion? Only last week, in Wisconsin, a panel of three Federal judges confronted with this problem named a "special master" or judge to effect a compromise solution in hopes of avoiding the task of reshaping the State's political map themselves.

The test for the future, it seems to me, will be essentially one of common sense. There must be some approximation of reasonableness in apportionment, the courts seem to be saying, and as long as changes are based on some rational basis and are not patently unreasonable, they will probably be constitutional.

Of equal fascination are the examples of practical politics in action that are emerging as the law itself develops in this whole area.

Political leaders everywhere are themselves moving quickly to get the job done after years of refusing to consider apportionment questions. They know that their best chance of controlling the shape of the future and retaining their power lies in meeting the challenge themselves rather than letting the courts do it.

Their strategy is clear: Give urban and suburban voters a fairer share in their representation, but not enough to upset any applecarts. Change things enough to satisfy the courts, but not enough to lose power or control.

It would be a mistake, I suspect, to conclude as a result of the Supreme Court decision that the shrewd men who have dominated many State legislatures for years will now automatically lose their status.

Indeed, the Executive Director of the Advisory Commission on Intergovernmental Relations, of which I am a member, has suggested that the pattern of discrimination by rural interests against urban concerns is overdrawn. His view is that the pull of party loyalties largely blunts the conflicting divergencies of interest.

Another expert, Royce Hanson of American University in Washington, who is leading the reapportionment fight in Maryland, sees the evolution of new systems of representation as a long and painful process because, in his view, no generally accepted theory of representation has been developed in the United States.

This is somewhat in conflict with the position of Charles Rhyne, the Washington lawyer who argued the *Tennessee* case in the Supreme Court. Mr. Rhyne foresees a drastic overhaul of some State governments on a theory of representation approaching complete equality. "You cannot use geography to dilute votes," he says.

If Mr. Rhyne is correct, the impact of the Court decision will, indeed, be momentous for some of you primarily concerned in county affairs. For he believes that reapportioning agencies will ultimately redraw county and other jurisdictional lines that have traditionally served as a basis for representation. He contends that these political subdivisions have been blurred by interests that cut across them and that the courts have already demonstrated such lines are not sacred by any means.

It has been suggested that uneconomical counties where political kingdoms have been supported largely by State financial aid will fall victim in any case to the automation and mechanization that is already invading many urban jurisdictions.

One thing is sure: the repercussions of the *Tennessee* decision are having at least a profound preliminary effect. It is certain already that the legislatures of Alabama, Georgia, Maryland, Mississippi, Oklahoma, Tennessee, and Wisconsin will undergo major apportionment surgery by the end of the year.

Changes are also possible in Indiana, North Dakota, and Vermont. And in at least 15 other States including Florida, Michigan, and New York, cases have been filed or citizens are threatening to file them.

One can no longer charge America's citizens with inaction on the score of representation.

But what of the ultimate future? Such forecasts in depth are risky, of course, partly because the ultimate effects of this revolution are not yet clear, as I have tried to demonstrate.

But one of the great sustaining features of America's democracy is its flexibility—its genius for adopting itself to changing times and differing circumstances.

Under our Federal system some conflicts between the National Government and the many State governments are inevitable and continuing. These conflicts did not, however, prevent development of the United States from a small agricultural enclave of 4 million people hugging the Eastern seaboard into an awesome industrialized society of 180 million people spanning the continent. These conflicts will not prevent the ultimate development of a more equitable form of representation at both State and Federal levels.

As a lawyer, I hold a deep and abiding respect for the Supreme Court. There are two sides to most questions and most certainly to the particular questions raised by the *Tennessee* case. But it is quite impossible for me to accept the dire consequences predicted by those who accuse the court of being power-hungry or intent on destroying States rights. In my judgment, the ultimate benefits flowing from this case are clear and demonstrable.

The explosive but constructive reaction of the lower courts and the politicians themselves is evidence that where invidious discrimination exists it will be corrected. And I do not believe the process will be a long painful legal struggle with no clear ending, as some have warned.

Leaders of business, politics, government, law and education are all concentrating on the problem as never before. I venture to suggest, out of all this increasingly widespread preoccupation, will emerge at least these ultimate developments:

(1) State governmental structures inevitably will be affected by a shift in power from rural voters, who have been traditionally conservative, toward urban voters who are traditionally less conservative, especially in those States where the imbalance has been greatest.

(2) This shifting of power will not, however, be a simple or a clear-cut advantage for one group at the expense of another. The very variety of the guidelines that will emerge in the several States, as the courts and the legislatures themselves resolve the issue will help provide accommodations for all interests to influence the eventual result.

(3) Continuing shifts of population, moreover, will virtually insure a periodic review of future apportionment that will in a limited sense keep the issue alive as a continuing challenge.

(4) Urban interests intent on exercising their newly won powers will engender a boom in State legislative activities that will be matched by the efforts of major political parties to win greater influence in the newly-liberated pockets of voting strength, particularly the suburbs.

(5) The exercise of greater activity and increased responsibilities in the several States will not, however, greatly affect the problem of trying to find larger sources of revenue for necessary programs that are beyond the means of most State budgets either in fact or politically. Federal-State partnership will continue to be an alternative.

(6) The question has been raised as to whether a substantial change in voting patterns may ultimately have an important impact on national voting patterns particularly in the South, with consequent changes in the complexion of the Congress and in the perpetuation of its present seniority systems. There is speculation as to whether this in turn could have far reaching effects on the whole spectrum of domestic issues in particular such as wages, farm supports, area redevelopment, education, and problems of the aged.

My own view is that these are highly speculative possibilities at the present time.

These things apart, I believe that the decision of the Supreme Court in the *Tennessee* case will find its greatest meaning of all in the opportunities it offers for a rebirth of vigorous and responsible State government more responsive to the needs of its citizens and truly representative at last.

Having been both a Governor and a Senator, I think I have seen the State's problems from both sides. And this widescreen view has confirmed my opinion that imbalanced representation has been a terrible burden sorely handicapping the States in their efforts to meet the awesome responsibilities imposed by modern society.

Unfair apportionment does violence to the doctrine of majority rule and makes a sham of adult universal suffrage. It strikes at the fundamental right of every citizen—the right to vote. It has corroded the foundations of constitutional democracy. It has sapped the vitality of our State institutions.

The Supreme Court has triggered a vast upheaval that is already removing this encumbrance. By this decision, the Supreme Court has not, as some have said, sounded the death knell of States' rights. Rather it has provided an incentive and a mechanism for reawakening and reasserting the exercise of both States' rights and States' responsibilities at a point in history when it had to be done.

It has, in my judgment, once again demonstrated the incredible inspiration and wisdom of our Founding Fathers in reaffirming the validity and real purpose of the separation of powers among the executive, the legislative, and the judicial branches of these United States of America.

Mr. HILLENBRAND. We would like to address this brief statement to the subject that has been raised by you in your opening statement, Mr. Chairman, and by Senator Mundt, and by Senator Ervin, the whole question about the division of revenue sources in the Federal system of government.

If the States and localities are to be vigorous partners in our Federal system of government, there is urgent need to devise a new national tax structure that will insure that the States and localities are guaranteed adequate funds to discharge their responsibilities.

Historically, in our first attempts to build a Federal system of government under the Articles of Confederation we learned that the tax structure is the key to the strength of the National Government (or any other government for that matter).

In effect, we left the Federal Government financially at the mercy of the States and that proved to be completely unworkable. Today we have swung nearly full cycle and we now have the States and localities increasingly at the financial mercy of the Federal Government. This is not workable either if we want to preserve our Federal system of government.

Many well-meaning critics of State and local government deplore the weakness of the States and localities and exalt the strength of the Federal Government.

Facetiously, we would suggest that this could be reversed overnight by swapping tax sources. We will give the Federal Government the real estate tax and revenues from fishing licenses; we would take the corporate and individual income tax. We would then make matching grants-in-aid to the Federal Government, providing of course, that the Federal Government met certain standards established by the States and localities.

The central fact of intergovernmental relations in our Federal system is that the Federal Government has and must continue to raise enormous amounts from the taxpayer for defense and other purposes.

One example illustrates the magnitude of these Federal expenditures in relationship to local government expenditures. This year the United States will spend \$9.4 billion for interest on the Federal debt.

This is nearly 50 percent more than the \$6.5 billion combined expenditures of our 3,047 counties. And yet with our \$6.5 billion, we employ 750,000 people to administer welfare, justice, roads, elections, recordkeeping, law enforcement, schools, and a host of functions vital to the Nation.

Both the Federal and the county programs are important and necessary but since World War II, we have found that it has been easier for the Federal Government to raise its revenue than it has been for the counties, cities, States, and other units of government. This is one of the reasons for the sharp increase in pressure for more Federal financial participation in local affairs.

It is all well and good to say that the States and localities are negligent in raising their own funds and run to the Federal Government for money as an act of political cowardice. This ignores the fact that there are basic limitations in the use of State and local revenue sources in that each State and locality is in tax competition with all other States in the drive to attract industry. They feel that they cannot raise taxes or industry will move. This explanation also ignores the painful fact of life that taxable wealth is not evenly distributed among the States and localities.

Another important reason for the inability of States and localities to raise money has been the preoccupation of many State legislators with tax rates at the expense of consideration of what many consider to be vital needs of the citizens of the States.

All of us can cite examples of State legislatures who have haggled endlessly and failed to enact the necessary tax legislation to preserve the financial integrity of the States and localities.

We all realize that national tax policy is enormously complex and packed with white hot controversy, particularly when we get down to deciding who pays and how much. Even with this in mind we would like to advance for consideration a proposal that illustrates the scope and direction in which many of us think that a national tax realignment program must take, if the States and localities are to play any meaningful part in the long-range development of our country.

We suggest that the Federal Government encourage the States to levy adequate taxes by allowing a tax offset or credit of taxes paid the State against the taxpayers' Federal individual or corporate income tax liability.

In other words, if the Federal tax credit were established as 10 percent, the individual taxpayer in participating States could pay up to 10 percent of this Federal tax with receipts from paying his State individual income tax.

The same principle would apply to Federal corporate income tax liability. This offset principle is being applied at present to the Federal inheritance taxes. It might even be possible to have the Federal Government collect the State taxes and return them to the State.

While there would certainly be a great number of problems to be solved, this tax approach would virtually assure that every State would enact broad base income taxes. Again the States would, in turn, have to share these revenues with their local units of government. It would also protect from unfair tax competition those States that would

like to levy adequate taxes but fear to do so because of a fear that industry would flee to low tax States.

This system would have the effect of placing the States and indirectly the localities in the main stream of American taxable wealth—namely, individual and corporate income taxes. It would also gear our local tax structure to that of the Federal Government and help to insure that national expenses are not made at the sacrifice of equally important State and local programs.

With a more stable tax base and larger amounts of revenue the States and localities would be in a much better position to discharge their responsibilities for some of the programs that have been assumed by the Federal Government because of the inability of the States and localities to finance them.

We would envision that the Federal Government would shift some of the financial burden of existing programs back to the States and would be less likely to enter new fields now being considered.

It should be kept in mind that there would still be a need for Federal grants-in-aid for certain programs because the needs of the States are not geared to the taxable wealth of the State.

In other words, some States will find for example that they have a disproportionate higher welfare caseload and a disproportionately lower share of the national corporate and individual income. This can only be equalized by Federal action.

We are not tax experts and are advancing the idea of revenue realignment with real emotional attachment to the specific claim we have here advanced.

Our experience with trying to strengthen local government by the piecemeal approach a function at a time has not been encouraging. We believe it is time to get at the basic cause of our difficulties rather than to spend all our time trying to put out brush fires.

It would appear that for now and into the foreseeable future, government is going to be concerned with slum clearance; urban and rural renewal; public housing; mass transit; air, soil, and water pollution control; supersonic travel facilities; and atomic energy development. We believe that decentralized administration of these programs through vigorous State and local government is vital. The national tax policy should be adjusted so that States and localities are in a financial position to share as equal partners in these and other programs.

Thank you very much for allowing us this opportunity, Mr. Chairman.

NACO is very anxious to work with the subcommittee, and we are looking forward to the testimony this fall.

Senator MUSKIE. Thank you very much, Mr. Hillenbrand.

We have one more panel member to present, Mr. John Garvey, Jr., assistant director of the American Municipal Association. Mr. Garvey informs us that he has not had an opportunity to prepare additional copies of his statement. His prepared statement, in the form of a letter addressed to the subcommittee will be placed in the record at the conclusion of his remarks. (Exh. 4, p. 45.)

Mr. Garvey would like to present the highlights of this statement.

STATEMENT OF JOHN GARVEY, JR., ASSISTANT DIRECTOR,
AMERICAN MUNICIPAL ASSOCIATION

MR. GARVEY. Thank you, Mr. Chairman. It is a pleasure to be here. Pat Healy, the director of our organization, is at the moment in Kansas and regrets he was not able to be with you today.

I would like to take this opportunity to highlight my statement. We have presented 21 suggestions, gentlemen, and the first 11 merely recite the intergovernmental policies that are contained in our association's national municipal policy.

This policy was developed and adopted by our membership at the annual conference. Last year we devoted the entire theme of our convention to intergovernmental cooperation and at that time Senator Muskie was our main speaker.

We have here the suggestions passed up from our members that have been developed into policies, and I will run through them very briefly.

The urban policies of the Federal Government we think are of such magnitude that require both a Department of Urban Affairs as well as a unit within the President's Office coordinating matters relating to governmental cooperation. Both of these policies were reaffirmed by our membership less than a month ago.

We feel strongly in favor of a 5-year census of population.

We think local governments ought to have a fair share of surplus property disposal.

We state here the matter of financing municipalities, and the objective that we see with respect to bringing the total local, State, and Federal picture into balance when new sources of revenue are being discussed.

We state our objectives with relation to intergovernmental relations.

We strike hard at the fact that we think that the Federal Government should comply with local codes, ordinances, and zoning regulations when building structures within municipalities.

We point out our Federal aid to metropolitan area policy and we feel there should be a taxation policy on private contractors doing work for the Federal Government.

We suggest withholding of local income taxes from Federal employees on the same basis as that required of private employers.

With respect to federally owned property, we urge the Congress to enact the necessary Federal laws consenting to the assessment of federally owned property for special benefits.

We conclude in the first part of our paper, Mr. Chairman, recommending a broadly expanded program of federally financed urban research.

On the last 10, taking Warren Cikins' suggestion that we let our minds wander a bit on the opportunities that are before us on intergovernmental operation, we offer these suggestions.

One, we think it might be worthy to explore the possibility of standardizing the boundaries of regional Federal districts. We think here you might wish to identify all the agencies which have to do with programs affecting the urban and State governments, check the States that each of them cover and bring them together in some kind of a better coordination with the same regional number identifications. Then possibly out of that could grow the establishment of regional co-

ordinating committees, made up of both State, local, and Federal representatives.

Secondly, we think that a total impact study of Federal aid might be well advised in some of our metropolitan areas.

Right now, as you know, there are various levels of programs affecting urban and metropolitan areas which are done individually and many times independent of each other.

It would be important, we think, to have a look at the total effect of Federal programs in metropolitan areas by selecting a few for study.

We think strongly that the concept of long-term financing and planning is most important not only for municipalities but the Federal Government, and we are thankful in that regard for the workable program suggested because many of our cities are trying desperately to do this. We think this is of equal importance to our States and Federal Government that they should also look ahead and plan, particularly now that many of the nonproperty municipal revenues and expenditures are made up by intergovernmental factors.

So, you almost need to know what the other units of government are thinking in order to help you project your own budgets.

The fourth point we make is we think there ought to be some consistency in Federal urban policies. Trying to be constructive, we do point out that under one program, for instance, urban renewal, relocation expense is permitted.

In another, the highway program, relocation expense for the displaced person is not permitted.

This, of course, we hope will be taken care of in the new Highway Act. We think that a program such as having one agency of government decide what airport facilities ought to be constructed should be coordinated with the other agency of government which decides what flights are going to be permitted into the airport after it is constructed.

We think, it would appear to use, that sometimes the agencies of the Federal Government are almost competing with each other on things such as the open space program which is an HHFA program and also concepts of that are appearing in the agricultural proposals where they have set aside open spaces for recreational and other purposes as a means of retiring unproductive lands.

The next point we make we feel there ought to be some thought given to the possible use of census tracts for cost centers. Not enough of our governmental units know enough about what it is costing them to do business. We think the cost bases could be used or at least explored. The Census Bureau in setting up their various census tracts could be set into measuring units whereby all of the units of government (I don't mean just cities, but I mean school districts and counties, States, and the Federal Government), can know what it's really costing to serve specific areas, giving them some kind of a uniform basis to tie into.

Next we think that metropolitan mapping is a coming thing, that more ought to be done on that basis.

Our association has just recently joined hands with the National Association of County Officials trying to stimulate metropolitan areas into getting together on a cooperative basis. Some are already doing

it but we have got the biggest job ahead of us. We think one big way to do this, Mr. Chairman, and members of the committee, is to give them something around which they can gain some identity.

If they see themselves on the same map and kind of work together, the map brings them together because it is up to them then to keep it up and provide the updating information to the Census Bureau.

The next thing we find a little hard to understand is that we think that there should be more thought given to programs that are particularly of a controversial or other nature where the public purpose may not be quite understood as yet by the citizenry. More attention should be given to the public information programs that go along with these programs.

In other words, in our urban renewal program where there has been some question as to need and purpose, there has been little done with respect to providing agencies public information operating budgets as a legitimate item of expense, as means by which the citizenry can be told and can at least understand the pros and cons of the program. As a result of not permitting this, what happens?

A field day is made available to those who want to take opposition to the program. The program is full of phrases that are hard to understand to begin with, and someone is not there to tell the people what this means and as a result the Federal Government's investment in planning advances is lost and in many cases many of our city councilmen are lost in the next election.

The State transportation planning coordination needs to be a little better done with respect to the Bureau of Public Roads and the Housing and Home Finance Agency at State levels.

Perhaps one effort in that direction is the creation of what you might call the State department of transportation and economic development where these can come together.

We think more needs to be done with respect to just plain sharing of information between all of our agencies. We suggest here that possible thought might be given to a central depository of national information to which all units of government, and not just government, but private agencies, foundation and so forth, might make a deposit under some rules and regulations. This could be, for instance, the Library of Congress.

The last one, I think, we must always keep in mind we want to stimulate and we want to strengthen local government in these programs, and I think that it is important for all of us to realize that by working cooperatively in a joint partnership-type of a venture that we want to try to do that which would help each other strengthen itself the most.

Heaven knows it is difficult to have local government which provides its own initiative and local self-determination to be handed instead a set of details by Federal agencies saying, "This is the way you must do it."

You remove the incentive and the initiative completely and you give the local government merely a manual to go by. You replace their initiative and you do the thinking for them.

I think you should hold local government to the results that are expected, the accomplishments of the program, and let each level of government try to strengthen its cause. Heaven knows we have got

to work together and it is not one against the other, but one with the other.

Thank you very much.

Senator MUSKIE. Without objection, the full text of the letter will be incorporated in the record at this point.

(The letter previously referred to follows:)

EXHIBIT 4

SEPTEMBER 18, 1962.

Hon. EDMUND S. MUSKIE,

Chairman, and Members of the Subcommittee on Intergovernmental Relations.

GENTLEMEN: On behalf of the members of the American Municipal Association, involving over 13,500 municipalities, may we take this opportunity to thank you for permitting us to come before you today. We welcome this opportunity to submit this paper covering significant problem areas in the field of intergovernmental relations.

Our suggestions today fall into two categories. The first group of 11 has been taken from our association's national municipal policy and previous testimonies by officers of our association, and the second group of 10 suggestions represent general observations.

Our first group of suggestions is:

1. Urban policies of the Federal Government

On February 8, 1962, then president of AMA, Gordon S. Clinton, mayor, Seattle, appeared before the Government Operations Committee of the House of Representatives in support of the President's Reorganization Plan No. 1 to establish a Department of Urban Affairs. In that testimony, Mayor Clinton said, in part:

"While the establishment of a Cabinet level Department of Urban Affairs and Housing would give urban matters the attention they deserve at the highest levels of Government, and while it would result in some degree of coordination, there would still be no single individual or agency at the Federal level concerned with the aggregate of the urban problem. Nowhere at the Federal level has it been sufficiently recognized that the many existing urban problems with which the Federal Government now deals—highways, airports, urban renewal, water pollution control, advance public works planning loans, etc.—are inter-related and cannot be fully effective unless coordinated with one another. We do not delude ourselves that the mere creation of a Department of Urban Affairs will solve the basic problems involved in the relationship of cities with the Federal Government.

"A most important step to help urban areas in their dealings with the Federal Establishment would be for the President to organize his own Executive Office as is now done for the Bureau of the Budget so that he has the coordination machinery that will be needed with or without a Department of Urban Affairs.

"My suggestion today is that intergovernmental problems must of necessity be given the same overall and central attention that budget requests receive.

"Whatever detailed arrangements might be worked out, the President is going to require Executive Office staff to assist him in the monumental task of directing vast Federal programs with fantastic impact on urban areas. With or without a new Department the President will be required to referee disputes between various Federal agencies in their approach to urban problems. He should have the facilities and the advance planning to enable him to make intelligent decisions, and he must have a staff to plan ahead for future programs.

"Our need as urban officials is not just to see that we have a 'spokesman.' Even more important to us is for the President to have the staff to get him the facts. The President, in the field of intergovernmental relations, and particularly urban relations, is now chronologically where he was before the Budget and Accounting Act. The impact of new programs makes essential a coordinated effort by the Federal Government. With or without a new Department this can only be accomplished by the President."

It is our understanding that legislation has been referred to your committee that would make such White House coordination on urban affairs and relations possible. At our 1962 annual meeting, known as the American Municipal Congress, our association's policy in favor of a Department of Urban Affairs was reaffirmed, and the following statement was added to our policy: "We recommend to the President that a unit be established in the Executive Office of the President to assist the President in the monumental task of directing vast Federal

programs with important impact on urban areas administered by a variety of agencies and departments."

2. *Census of population*

Economical and efficient operation of local, State, and Federal Government depends in part on adequate and timely information. Because of the continuing high rate of population increase and the highly mobile nature of our population, AMA respectfully recommends that a 5-year census of population be instituted.

3. *Surplus Federal property*

AMA urges the U.S. Congress to enact legislation permitting the sale to State and local governments of Federal surplus real or personal property at private or negotiated sale and at the same price that such properties are offered to other Federal agencies.

The American Municipal Association urges the Federal Property and Administrative Services Act of 1949 be amended to provide that property donated to the United States by a State or political subdivision thereof when subsequently declared surplus shall be conveyed to said State or political subdivision without monetary consideration.

The American Municipal Association recommends the Federal or State governments subdividing land for public sale for residential or commercial use, subdivide and plat such land in conformity with recognized and accepted subdivision practices and in accordance with standards established by the State or local governmental jurisdictions for the protection and well-being of the purchasers and the long-range local public interest.

The American Municipal Association recommends that the Federal Government exercise a strong preference for municipalities by creating favorable terms for grants and authorizing rights-of-way over federally owned land for waterworks purposes; and that any conditions that may be attached to such grants be consistent with recognition of the high order of importance of waterworks facilities.

4. *Financing municipalities*

The municipal governments are entitled to sufficient revenue to finance the activities required of them by custom or law. The revenues they need will be determined by the responsibilities they assume. In general the public interest will be served best when the public officials who are responsible for an activity are also responsible for raising the revenue. Sources of revenue should be allocated in such a way that unreasonable duplication is eliminated. Real estate taxes should be used solely by local governments. Each property should be assessed by only one governmental unit. Even though some type of property can be best assessed and taxed by the State, still the revenue in such cases should be returned to the local governments as unearmarked, shared taxes.

Simplicity and directness of the entire local, State, and Federal tax system should be considered when new local taxes are imposed.

5. *Intergovernmental relations*

The relations between the Federal, State and local governments determine the limits on the ability of municipalities to solve their own problems and to serve their citizens. Therefore, progress in American municipal governments is dependent on a proper relationship and understanding between the various governmental levels and units.

The need for such an understanding is emphasized by looking at the many areas in which questions of intergovernmental policy and action arise. These include Federal-local relations, State-local relations, Federal-State relations, metropolitan area problems, county-city relations, intercity problems, and regional relationships.

At least eight major reasons can be found for consideration of the relations between governments in the United States. These are—

- (1) The competition for revenues.
- (2) The overlapping and duplication of services.
- (3) The tendency to provide so many independent governmental units in a geographic area that it no longer functions as a recognizable governmental unit.
- (4) The tremendous effects of State and Federal grants-in-aid on local governments.
- (5) The impact of State and Federal standards and State and Federal personnel on local affairs.
- (6) The demand for local services and expenditures growing out of Federal programs.

(7) The competition for high-grade personnel between the Federal, State, and local Governments.

(8) The absence of any overall policy on relations between the levels and units of government.

All these relations and problems are also opportunities—opportunities for initiative and constructive public action, serving the general community.

There is no inherent antagonism between the Federal Government, the States, and the municipalities. The business of these levels of government is a joint business. In its overall aspects, government should be conducted as if it were concerned with all of the people and with due regard for its impact on the individual citizen where he lives.

The American Municipal Association favors the enactment of general legislation to require the appropriate committees of the House and Senate to subject all grants-in-aid enacted in the future, unless specifically excluded, to detailed review at 5-year intervals to determine whether they should be expanded or terminated or otherwise modified to reflect changed circumstances since their original enactment or last revision.

Legislation pending before the Congress would authorize Federal agencies to relinquish unnecessary jurisdiction to the States under appropriate safeguards. The American Municipal Association urges the Congress to enact promptly legislation to authorize Federal agencies to transfer legislative jurisdiction together with the appropriate taxing power over these properties to the States in those cases where the retention of exclusive Federal jurisdiction is not required for purposes of the Government's objectives.

6. Federal compliance with local codes.

Many cities have had increasing experience with numerous construction projects of the Federal Government within their political boundaries where Federal agencies have not complied with the minimum requirements of local codes in the jurisdiction of planning, building, plumbing, electrical, health, fire, parking and zoning.

The American Municipal Association urges adoption of a Federal administrative policy that all governmental agencies comply with local rules and regulations. This matter was given to the Advisory Commission on Intergovernmental Relations who in turn referred it to the Bureau of the Budget where it is now being studied.

7. Federal aid to metropolitan areas

Aid programs are designed to assist in meeting certain problems which transcend traditional city problems, and therefore, grants-in-aid should be based on the total population to be served in an area rather than the population of the unit of government designated to perform the service.

Effective comprehensive planning in metropolitan areas to complement efforts of local governments is necessary to help achieve a sound and orderly pattern of metropolitan development and help coordinate State and local development activities at the local level. Therefore, we recommend that section 701 of the Housing Act be amended to provide continuing support grants for comprehensive planning activities to metropolitan planning agencies rather than solely on the basis of individual projects.

8. Taxation of private contractors doing work for Federal Government

Congress should enact legislation which will prohibit the operations of private contractors doing work for the Federal Government from being exempt from nondiscriminatory State and local taxes normally imposed on private persons engaged in substantially similar operations.

A recent decision of the California Supreme Court prevents the collection of personal property taxes on inventories held by governmental contractors and subcontractors. This decision creates a gaping loophole in tax structure of political subdivisions throughout the Nation which deprives political subdivisions of the revenues required to finance vitally needed public services.

The American Municipal Association urges the Congress of the United States to pass legislation to permit States and other duly constituted taxing authorities to subject all persons including corporations to liability for the payment of personal property and inventory taxes on all personal property and goods in process and permit the levy of taxes therefore until such time as the governmental agency contracting for such goods assumes possession of personal property and goods in process for its final governmental use.

Until such time as a broad system of payments in lieu of taxes is adopted, the association urges that the executive branch of the Federal Government discontinue the inequitable practice of placing in defense contracts a partial or advance payment clause. Any payment under this clause regardless of amount, causes title to personal property used in defense production to pass to the Federal Government at the time such payment is made. This practice results in exempting such personal property from all local property taxation although the property is in the possession of and used exclusively by the private contractors.

9. Tax withholding

Congress should protect the integrity of local municipal income taxes in those States where the taxes are levied by authorizing Federal agencies to withhold such taxes from Federal employees on the same basis as that required of private employers. The legislation should provide for withholding at Federal installations within a reasonable distance outside the limits of the city in those cases where nonresidents who work in the city are subject to the tax.

10. Federally owned property

Special benefits assessed to all other owners of real property, including the States and cities under State law, for street improvements, including water mains and sewers and other improvements, cannot be assessed to federally owned property similarly benefited without the consent of the Congress expressed by the Federal law. The American Municipal Association strongly urges the Congress to enact the necessary Federal laws consenting to the assessment of federally owned property for special benefits.

11. Research

We recommend a continuing program of federally financed urban research on a scale commensurate with the fine research programs undertaken by the Bureau of Agricultural Economics.

Our second group of suggestions are varied and are given in the spirit of the purpose of your subcommittee's meeting—that is, to help you look for new and imaginative approaches to intergovernmental relations.

12. Standardization of boundaries of Federal regional districts

It might be the desire of your subcommittee to identify all Federal agencies rendering programs that affect municipal and State governments and in turn to explore the desirability of making their regional boundaries identical in size and their regions identically numbered. This would permit better regional agency coordination, and the possible establishment of regional, State, municipal coordinations committees.

13. Total impact study

Little is known of the total impact of Federal programs on metropolitan areas. Each program is administered independent of each other in any given metropolitan area. It would appear that select metropolitan areas should be studied to see the total effect of Federal programs in those areas, and the need for better coordination of policies within the Federal agencies.

14. Long term fiscal planning

Some Federal agencies, notably HHFA in its workable program, recommend long-term financial planning, which is good. The Federal Government should aim in that same direction themselves as should States and all local governments. The budgets of local government are made up of intergovernmental payments, grants and expenditures and State and federally collected, locally shared revenues. How can localities project expectancies on budget items from higher levels of government if those higher levels do not themselves project their assumptions?

15. Consistency in Federal urban policies

The Federal Government is one unit but when one deals with its many agencies, one wonders. In city governments, what applies to one department applies uniformly to all. In the Federal Government things such as the following are hard to understand in intergovernmental relations: (a) Under urban renewal, affected property owners get relocation assistance, yet the same is not true if that same property owner was relocated because of a highway. The workable program makes a municipality responsible for relocating all persons displaced by any public action and it specifically mentions highways. Yet no highway relocation assistance is available; (b) it appears that closer coordination needs

to be developed between those who decide to construct airport facilities and those who decide what flights will use that airport after constructed. Municipalities and the Federal Government cannot afford to invest capital that is not going to be used; (c) often it appears that more than one agency is competing for the same urban program, causing some confusion. Witness the open spaces program in effect in HHFA and the open spaces policy contained in legislative proposals of agriculture.

16. Use of census tracts as cost centers

The Bureau of the Census has developed units of reporting of data identified as census tracts. Municipalities are badly in need of cost accounting development as are most units of government today, in order that cost-benefit information can be received on property values, cost of services, etc. In designing census tracts of similar measuring units, thought might be given to the use of these units to get a better understanding not only of the nature of occupancy, etc., but the cost of service to those areas by cities, by schools, by counties, by other districts and even by State services.

17. Metropolitan mapping

The American Municipal Association and the National Association of County Officials have joined together to urge the formation of regional voluntary cooperative units as a means of having the officials in each such area sit down as a unit, identify their needs, and attempt to work out mutual solutions to their problems. There is a lot that Federal and State agencies can do to encourage (not force) such areas to get together. The more each area can identify itself as a working unit the better. One way, though simple sounding, would be to have the Bureau of Census map metropolitan areas as a unit the same as they map a municipality as a unit. This could be done as a service to those regional areas that had formed voluntary, cooperative groups, for it would in turn have to be the promise of these groups to organize themselves regionally to maintain the map.

18. Stimulate and strengthen local government

Occasionally in the implementation of Federal urban policies, it appears that the very purpose of local government may be overlooked and as a consequence municipalities find themselves having their thinking done for them with manuals and details and requirements rather than being given the objective permitted to use initiative and held accountable for results. It would appear that our levels of government, working cooperatively in joint partnership intergovernmentally, would want to respect the inherent elements of each that make them strong.

On the subject of implementation of Federal laws, care should be used by regional and Federal administrators not to interject actions indicated by the members of Congress in enacting the law.

19. Public information on urban programs

The Federal Government has been satisfied to make local grants for urban programs at times representing substantial investments in projects of controversial or questionable public purpose by not permitting the inclusion of a public information officer within the project budget (really but a minor cost addition proportionately). A void of information resulted at a time when a flow of knowledge was needed. What happened usually? Opposition had a field day running wild with programs that used technical phrases no one understood and as a consequence, many programs were thrown out with the Federal allocation and local expenditures wasted, and the local municipal official often defeated at the polls. What a big difference a little protection of investment would have made under the heading of "public understanding".

20. State planning coordination

At the State and regional level there appears to be a need between the Bureau of Public Roads and the Housing and Home Finance Agency to coordinate their use of planning funds. Perhaps a State department of transportation and economic development could accomplish much of this.

21. Sharing information

More needs to be done to share technical knowledge between governments by better contact between officials; perhaps a central depository of urban research and technical information could be established and indexed by, say, the Library

of Congress. Into such a depository should be pooled the efforts of not only governments, but private foundations, universities, State legislative service agencies, etc.

Thank you for this opportunity. We hope to have more suggestions at a later date.

Sincerely yours,

JOHN GARVEY, Jr., *Assistant Director.*

Senator MUSKIE. Thank you very much, Mr. Garvey.

I am grateful to all members of the panel for what I think is an excellent collection of statements. Certainly they have submitted to the subcommittee a wide range of problems in the intergovernmental field.

In addition, they have been constructive in proposing ideas for improvements.

It is rather interesting that there should be two or three apparently conflicting threads running through some of these statements. There is the proposition, for example, that, in some respects at least, State and local government can be strengthened by Federal assistance.

On the other hand, there is the suggestion that State and local government is sometimes weakened by Federal assistance and Federal interference.

And then, of course, there is the suggestion that there are areas in which, but for Federal action, State and local governments might be operating more effectively and more efficiently.

I think these are all appropriate and legitimate points of view.

Now, with respect to this hearing, I understand from Senator Mundt that we may be called to vote at any time within the next hour, and if we are, that call may bring an abrupt close to this hearing, because I doubt that we could now go over and vote and come back and have enough time left to constructively continue the discussion. So I am going, now, to defer to my colleagues for such comments and questions as they might like to ask with respect to your statements.

I would suggest that if a question is posed for any member of the panel, that other members of the panel, who may wish to comment, be invited to do so at that point so we may get any variation in points of view that there may be.

Senator Mundt?

Senator MUNDT. I was also interested in the conflicting thread, as you called it, that I observed. I was wondering what would happen if we locked the panel in a room all afternoon and asked them to come up with some ground rules which would govern the handling of grants-in-aid, and other intergovernmental programs.

For example, would you hold that the governmental source that provides the money should have complete control as to how it is expended or would you argue that once the Federal Government had provided the money, that the control should be handled by the State, or the municipality, or the county?

I think there would be some controversy among you for a while before you determined what ground rules to establish in that regard. I do think it would be fruitful if we can come up with some basic ground rules in this whole area of intergovernmental activity.

Speaking of questions, I would like to ask a question of Mr. Hillenbrand, whom I have known for a long time as a very active and effective and persuasive advocate certainly of the position of county officials.

Where you speak, on the first page of your statement, about this ingenious device which you have, which would reverse the whole procedure, you mention that we will give the Federal Government the real estate tax and revenue from fishing licenses while we take corporate and individual income taxes.

I would like to have you comment a little bit about one very fruitful tax source which you did not include in this possible switch, and which, at least in my State, has done much to overcome the kind of financial problems which I hear described by representatives of State governments and that is the State sales tax.

I am wondering if any member of the panel could advise us how much is raised in the aggregate across the country for the States and for the municipalities by use of the general sales tax, either a municipal tax which some cities have or the State tax which many States have.

It is a very fruitful source, at least it seems to me, in the States where it is applied, and has been pretty generally left in the hands of the municipalities and the States by the Federal Government, except for certain excise taxes on specified products.

Would you comment on that, Mr. Hillenbrand?

Mr. HILLENBRAND. First of all, we are certainly not advocating swapping the taxes. That was meant to be a facetious remark.

Senator MUNDT. I understand.

Mr. HILLENBRAND. But it is a little annoying that people are always accusing us of being inept, and a lot of other adjectives, and we believe that the basic source of the problem is money.

We see some very bad things happening because of the inability to raise the money locally.

For example, we have a huge eastern State where there are 600 school districts that are levying income taxes—income taxes at the school district level. The same thing is developing in another major midwestern State. We find that this is undesirable.

The locality shouldn't be involved in income tax collection, in our opinion. We are after a way to revise or realine the revenue so that we have money enough locally to participate as effective partners. In some of these programs where the amount of money raised locally is so very, very small, we are not having very much to say about how the programs are to be administered.

Senator MUNDT. You didn't quite get to my point, Mr. Hillenbrand, on the sales tax.

Mr. HILLENBRAND. Increasingly, of course, the States are levying the sales tax, and this has worked out in a whole lot of communities, particularly when the tax is collected by the State and returned to the localities.

The difficulty with the sales tax at the local level is in deciding the jurisdiction. There is the age-old battle of people buying gasoline and other things outside of the taxing jurisdiction. It is a difficult and extremely costly tax to administer.

There is also the argument about the incidence of a sales tax. Many people feel it is an unfair tax (depending on what you are going to exempt and tax). There has been a reluctance in many communities to get into the sales tax for some of these reasons.

Senator MUNDT. Do you know of any counties that have a county sales tax?

Mr. HILLENBRAND. Oh, yes; it is levied countywide in a great many places. This is a better way to levy it.

Senator MUNDT. Out of 3,047 counties, how many counties, roughly, if you can't give it exactly, would you say apply a county sales tax, and if so, for a specific purpose or just general county revenue?

Mr. HILLENBRAND. That is a question I couldn't answer. There has been some new analysis turned out on the tax revenues of the United States which was just sent to us by Congressman Everett, and perhaps that is in there. I would like permission to put it in the record.

Senator MUNDT. That would be fine.

Senator MUSKIE. Without objection that information will be placed in the record at this position.

(The information referred to follows:)

COUNTIES WITH SALES TAXES

	Counties		Counties
Alabama-----	13	New York-----	5
California-----	58	Utah-----	19
Illinois-----	56	Louisiana-----	3

County sales taxes are completely locally administered in Louisiana and New York. In Alabama many of the counties have reached agreement with the State to have the State collect the tax for them but a few also administer the tax themselves. In the other States (California, Illinois, and Utah) the tax is State administered.

Senator MUSKIE. I think Mr. Colman may have a comment on your question.

Mr. COLMAN. One comment or an endeavor to give a rough answer to your question, Senator Mundt, with regard to sales taxes: If we take State-local taxes combined on a nationwide basis in 1961, property taxes constitute about 46 percent of that total, sales taxes and income taxes together constitute another 42 percent, and then a whole range of miscellaneous things constitute the other 12 percent.

Now, getting back to the sales tax, something in the neighborhood of 30 percent of total State-local revenues come from State or local sales taxes, and that is edging up all along, and as Mr. Hillenbrand pointed out when you endeavor to levy sales taxes and collect them at the local level it leads to a great many administrative problems.

One very effective method of handling the sales tax at the local level has been developed in Mississippi, California, Illinois and several other States, where if the State is levying a State sales tax itself, it authorizes the local units of government, if they choose to do so, to levy an additional 1 percent. The State collects the local amount along with and at the same time it collects its tax and then just turns the local collection back to the local unit of government.

So that piggyback arrangement on the sales tax is one method of getting around the problem that Mr. Hillenbrand mentioned, and allows local governments to take advantage of the sales tax as a source of revenue.

Senator ERVIN. Senator, I wonder if you would yield to me for a statement on this?

Senator MUNDT. Yes.

Senator ERVIN. I think North Carolina has a far superior system to the one mentioned by you as prevailing in Mississippi, California, and other States.

North Carolina, for example, has avoided the thing Mr. Hillenbrand spoke of by the State taking over responsibility for the operation of the schools in all of the school districts in North Carolina and the construction and maintenance of all roads in North Carolina other than streets in municipalities. The State leaves all property taxes to the local subdivisions. The State of North Carolina levies no property tax at all.

It levies a statewide sales tax of 3 percent, which it uses primarily to support the schools. It levies a statewide income tax and it prohibits the local units from levying either a sales tax or an income tax. North Carolina was wiser than the Federal Government when it established the income tax because it put limitations on the amount that can be levied. We operate our roads solely on the gas tax. Since the schools are supported on a statewide basis we have a fairly uniform system of schools throughout the State, supported entirely by State taxation resources. We have the same thing in respect to roads.

We have no State land tax. The State does collect what is called a tax on intangible personal property. It levies no tax on tangible personal property at all. It leaves that to the communities, but it levies a tax on intangible property such as stocks and bonds and bank deposits. But it refunds that tax to the localities in which such taxes originate. This system is working exceedingly well. The people have no objection to the sales tax which lets everybody pay according to their ability. Sales taxes are in effect collected by the retailers. Consequently it costs the State virtually nothing to collect the sales taxes which are paid by the people so gradually that they don't really realize that they pay them.

Senator MUNDT. How does it work out in the aggregate? Is North Carolina in debt or out of debt?

Senator ERVIN. North Carolina is almost out of debt. The only bonds we have are bonds issued by a statewide vote for local highways maintained by the State for some of our statewide institutions.

Many of our towns were unable to pay their bonds during the depression and we adopted a constitutional amendment by which we cannot pledge the credit of the State, a county or a town beyond 75 percent of the amount of the debts retired the previous year without a vote of the people of the area affected. That has enabled us to put our financial house in order at all levels of government. The legislature can no longer issue bonds or pledge the credit of the State beyond 75 percent of the amount of the State debt paid the previous year.

So all of our bonds except those issued before the depression or those issued to take up obligations incurred before the depression, were issued as a result of a vote of the people.

Senator MUNDT. I have just one other point, Mr. Chairman.

I wonder if anybody on the panel could tell us how the whole tax pie in America is divided, taking all the taxes of all the people. Does the Federal Government collect more than all of the local divisions combined and if so, how much more or what are the exact figures, gas tax, sales tax, every kind of tax that is collected.

Mr. COLMAN. Again, in very rough general terms, Senator Mundt, the Federal tax collections are about double the combined collections of State and local governments. However, the tax collections of State and local governments are rising at a faster rate than the tax collec-

tions of the Federal Government are rising, and that has been the case in the last decade. But at the present time it is roughly in the ratio of 2 to 1.

Senator MUSKIE. Mr. Garvey?

Mr. GARVEY. Mr. Chairman, may I add a point to Senator Mundt's question earlier on county and State taxes.

The State of California that Mr. Colman referred to, Senator, has the enabling legislation feature on the sales tax and it has now developed where all 58 of the counties have a 1-percent sales tax as well as all of the cities within the counties in California. Both units of local government have 1-percent sales taxes that are collected by the State, returned to the localities, less the cost of collection, without being earmarked but for general government use.

The only other point with respect to sales taxes that I would like to offer is that it is, of course, a nonproperty source of revenue and any unit of government needs to look at its balance of sources of revenue.

Overdependence on too flexible a source of revenue can hurt you, too, in economic recessions because it is not as easy to cut back on municipal, county, and State services to adjust to the downturn sometimes on these flexible revenue sources. And so a balanced picture of revenue sources not an overdependence on one source needs to be kept in mind.

Senator MUSKIE. I have two questions on the sales tax that I invite any member of the panel to comment upon.

Until the last 2 to 4 years, at least, 3 percent was considered sort of the accepted ceiling on the rate to which the sales tax would rise. I understand there have been at least one or two breakthroughs in that period of time.

My first question, then, is—is there a practical limit on the rate to which the sales tax could rise? It would seem to me that at some point at a high enough rate it would assume the aspects of a gross income tax which became too high and thus would be inequitable, and I would like a comment on that.

And secondly, in terms of the need of units of government which employ it, do revenues from the sales tax rise at a rate equal to the need imposed by the growth in the cost of services, and the growth in expenditures. It seems to me these are two important questions relating to the adequacy of the sales tax as a form of revenue for State and local government.

Mr. HILLENBRAND. To give one typical situation, in the community that is depressed the welfare load suddenly shoots up to the sky at the same time that department store sales and other sources of revenue from sales tax hit the floor. So the need for revenue does not coincide with receipts.

Senator MUSKIE. The sales tax does lack flexibility not only with respect to the situation which you described but I suspect also, with respect to situations where the general expenditures in the level of government all may rise or fall, it is not as easy to adjust sales tax rates as it might be to adjust income tax rates or income tax exemptions.

Mr. GUNTHER. Senator, this is not to suggest a solution to this problem, but rather to point up one of the disadvantages we face in our

State and local revenue programs as against the relying on the Federal income tax. That is the competition which Mr. Hillenbrand referred to.

In the advertisements and the brochures that our cities and States send out around the country to try to get industry to locate there they talk about the beauty and natural resources, but when they get into the final negotiations, and I have witnessed many times when local officials are trying to get a factory located in their community, they talk about the fact that their tax rate is so much lower than the city where the plant now is and they talk about the fact they will cut the tax rate lower if the company will move.

If you are going to encourage this kind of tax competition the city that's bidding is going to suffer in some way at home so far as its services are concerned. A few years ago States and cities competed on their great natural resources, the educational excellence of the State or city, but it is not operating that way today. Too many times the businessman has to consider where he can make his best profit and, therefore, you get this very, very bad competition as to "Who will charge us the least to do business in their community," and the sales tax is a tax which may be used to lower property taxes so that a State or city can take business from another State or city.

In one instance I recall a business had to rebuild either where it was or in another location. It decided to move to another city within the same State. The city moved to relied primarily on the sales tax and the other relied on the property tax. They liked the one that relied on the sales tax better because the company itself didn't pay it; it was only on retail and would, therefore, be paid by the employees.

Senator MUSKIE. I heard businesses that are thinking of moving argue that they would prefer an income tax to a sales tax because the income tax is a tax which is imposed only if you make a profit. A sales tax is imposed whether or not they make a profit. So if they are considering moving to a new location this is important to them. So there is this impact and this takes us to the suggestion of Mr. Hillenbrand that there ought to be some effort to develop uniformity of tax sources among local levels of government and State governments in order to reduce this competitive element.

Senator ERVIN. Mr. Chairman, if I may answer one of your objections. North Carolina puts a sales tax on the consumer, not on the producer, and it takes one of those arguments away.

Senator MUSKIE. Mr. Colman?

Mr. COLMAN. Well, you asked for comment about the suggestion of a credit against the Federal personal and corporate income tax in an amount equal to State income taxes paid. This has been a prevalent idea in a number of tax circles for the past few years. It was advocated very vigorously and persuasively by Gov. Orville Freeman when he was Governor of Minnesota as a way in which, and as Mr. Hillenbrand pointed out, revenue sources could be opened up to State and local governments.

There is one very vital feature of intergovernmental relations that is involved here and that is the fact that at the present time under our Federal system the States have self-determination as to the amount of taxes and the kind of taxes that they wish to impose.

About 36 States at the present time have elected to impose income taxes, the other 14 States have elected not to impose income taxes, and

to get their revenues from consumption taxes, liquor taxes, and so forth.

Now, one problem in terms of intergovernmental relations with this tax credit approach is that the Congress and the Federal Government would be forcing every State, whether they wanted it or not, to have an income tax, and would be forcing these 14 States who have chosen a different philosophical road on taxes, to get over into the income tax arena.

Senator MUSKIE. I think that is a very pertinent point to make, Mr. Colman.

Mr. Garvey?

Mr. GARVEY. Senator, earlier I recall you had a two-part question; I don't believe there was an answer.

May I comment with respect to the average sales tax levy that you think is existing now in municipalities. It is difficult to take an average nationwide because there are many cities and communities that don't have a sales tax, but within those that do have it I think we would venture to say it is now in excess of 3 percent—it could be 3½ and 4 percent—and in those cases where combined State and local sales taxes exist, it has reached 5 percent.

With respect to how far and how high can it go, and how much will people stand, I think it largely depends on what other taxes they are being asked to pay, so I think they have to see the total tax picture in a given area to answer that question.

One may go high on sales but low on income. That kind of analysis.

Senator MUSKIE. For a long time it was felt that 3 percent was the practical limit. I think as long as I can remember being involved in the question as a member of the legislature and as a Governor, this was regarded as the sacred limit above which you could not go. It is obvious that if a State is going to rely on this source alone as its major source of revenue it is going to have to go above this.

Do you feel that the sales tax has responded to the growth of the economy of any State that uses it to the extent that the growth takes care of the additional service requirements? I can't think of any examples of that.

Mr. SCHWAN. A State like Florida might possibly meet that criterion, but it would certainly have to be a rapid-growth State and most of our States aren't.

Senator MUSKIE. Turning back to Mr. Hillenbrand's suggestion of a tax credit. Would this really produce for the States that adopt the income tax—I agree with Mr. Colman probably all of them would be forced to do it—would this really produce revenues for those States which had anything like a logical relationship to their needs or to their abilities to pay for services?

Mr. HILLENBRAND. Well, we have suggested here you would have to do both things. You would still definitely need Federal grants-in-aid, because certain States simply do not have the same amount of revenue in the distribution of schoolchildren in the United States. For example, there is no relationship at all to the wealth of the communities in which they are located. We would suggest that you would have to do both. You would have to correspondingly reduce the amount of the Federal participation in some of these programs and shift it back to the States. For example, the urban renewal now has Federal par-

ticipation of two-thirds. Maybe you would cut that back to, say, 30 percent. You would still have to supplement urban renewal grants with additional appropriations of some of the poorer States with many slums. The Federal Government would still have to perform this equalization formula.

We, of course, suggest this approach for the very reason that Mr. Colman has mentioned. It would force the States to get into levying income taxes.

We, at the local level, are in a very unusual position in that the slums are in our communities; the airport that has to be built is in our community; and we are halfway between the problem and the Federal Government. The States have been very reluctant to let us raise enough revenue locally, and they haven't provided the money themselves. This is where one of the problems is for us—getting the States to act. Tax credit would be a device to force States to get into a broad base income tax.

Cite the example of the midwestern State that I mentioned previously. It is forcing a major city (a city of a million) to go into an income tax. The State turned down the idea of levying an areawide tax and forced it just to be levied in the city. It is applying it to the people who live outside of the city and who work in the city, and this is causing all kinds of antagonism and problems.

Now, these other communities will have to levy income taxes of their own, and the whole system of local government is in jeopardy because of the failure of the State to act in this regard.

There are other States that are in this same kind of situation—the one I mentioned. Imagine a school district having an income tax. It seems preposterous to us. The problem that it causes and the cost to collect a local income tax is exactly why we suggest some sort of a device like this to force the States to act.

After all, our grants-in-aid are compulsory in the sense that logical men will participate in a grant-in-aid once it is passed, because it is nonsensical to deny the people their aid.

We are not in love with this tax credit system but it is the kind of approach we are thinking of in terms of some overall adjustment in the tax alinement structure.

Ten percent of the Federal income tax, corporate and individual, will bring in about \$6 billion, which has some relationship to the \$10 billion of Federal grants-in-aid that are made presently to the localities. You might try a tax credit at a percent a year increase over a period of time or some other imaginative approach to the thing. But again if we are going to be in the ball game in atomic energy development, economic development, and these other things that Government is going to get into in the future, we are going to need funds. We have got to have some financial resources of our own in order to be admitted into the ball park.

Senator MUNDT. Would that reduce the Federal income tax by that same \$6 billion?

Mr. HILLENBRAND. That is right; you would have to increase the Federal tax to protect Federal revenues, but presumably you would reduce the Federal participation in some of these other programs by a corresponding amount, Senator. It would certainly be complicated to begin with, no question about it. But something must be done.

Any one of the grants-in-aid now before Congress, as, for example, mass transit, which NACO is strongly supporting, the State and locality cannot finance the necessary programs. We know it has to be done, but we come up with a dry well. We can't do it. The only place to get money is the Federal Government. We can make the same kind of a case, Mr. Chairman, in all the grant-in-aid programs. When we get into an individual problem costing large amounts of money, the logical answer is Federal participation if it gets beyond our capacity. We are suggesting that we think the other way around now. Let's adjust the tax program so we have financial capacity and we don't have to go to the Federal Government on all these programs.

Senator MUSKIE. A few years ago, while I was Governor, and while Frank Bane was running the Council of State Governments and running the Governors of the 48 States, a proposal was presented as a result of a recommendation of President Eisenhower, for ceding, giving up, on a very limited scale, certain revenue sources on the Federal level in turn for the States picking up some grant-in-aid programs or increasing the burden that they were willing to assume.

Well now, this limited proposal produced two results that killed it. The tables showing what happened to the finances of every State revealed that the additional revenues accruing to the States accrued to the States that needed it least, and the additional burdens that accrued to the States accrued to the States that could handle them the least.

Now, this was a reflection, of course, of the fact that on both the revenue side and on the grant-in-aid side you have equalization built in. I have never seen it more dramatically illustrated than in that proposal.

That was the reason why that proposal died. If it had gone through it really wasn't so big that it would have hurt any State mortally. But because it revealed what might happen if this idea gained momentum, the idea lost.

I think that is a fair analysis, so I think this is the kind of problem you face in the suggestion made by Mr. Murtha and the tax proposals suggested by Mr. Hillenbrand. By bringing up this past history I am not trying to discourage anything at all but I want to point it up simply to suggest the difficulties which we face in trying to reallocate the revenue sources that are available to all levels of government.

This problem, I think has run through all your testimony, and is perhaps the key. I don't think anyone on this committee would disagree with you that it is a very difficult one. I am delighted that Mr. Hillenbrand presented a specific proposal. I think it is worth consideration.

Senator MUNDT. Mr. Colman if we adopted Mr. Hillenbrand's concept of tax rebates it would not only do what you said initially, that is, compel all of the States to adopt income taxes, but would almost compel all of the States to adopt uniform income taxes because, to the degree to which there was no uniformity, the fellow with the small income tax in his State would be picking up the tab for the States which had big income taxes, isn't that correct?

Mr. COLMAN. There would be some of that, Senator. Those States that didn't like the income tax and were dragged into it by their heels, so to speak, would put in a tax rate only high enough to take full advantage of this Federal credit.

Now, other States that were already into the income tax game in a pretty big way and already had higher rates, would leave their rates where they are, presumably. The tax credit would, in my opinion, tend to produce uniformity for the 14 States that don't want to get into the income tax. It would probably not have too much of a leveling effect in the 36 States that already have an income tax.

Senator MUNDT. I was trying to relate your suggestion to South Dakota which is one of the 14 which doesn't have income tax and doesn't need an income tax and obviously doesn't want it. We have a campaign, as all States do. This year the issue back home is what to do with the balance of money that the State has, millions of dollars in the treasury, and people are arguing there is no reason they should be collecting money and keeping it, what should we do with it, and there are different situations.

Nevada has that unique situation. Minnesota for years has been financed by mines. South Dakota happens to be the State with the only operating gold mine in the Western Hemisphere and it gets its production tax from the production on gold, and to tell the people of South Dakota that, "You are going to have to pay an income tax in self-defense," would not be a very popular proposition and we already have the problem of what to do with the money we are collecting.

Mr. HILLENBRAND. We anticipate that it might cause some minor political problems.

Senator MUSKIE. As a matter of fact, there isn't one thing in this field that won't cause a political disturbance.

Senator Ervin?

Senator ERVIN. I was going to say to the Senator from South Dakota if his State has a problem of what to do with the money, my suggestion is that it turn the money over to Congress because Congress can certainly appropriate it.

Senator MUNDT. They are going to wait.

Senator ERVIN. Mr. Chairman, I think one thing that has been emphasized here, maybe Mark Twain was a wise man. He said he wouldn't make any comment on the words of the Scriptures where it says the love of money is the root of all evil, but he would say as the result of his experience that the lack of money was the source of great inconvenience.

Senator MUSKIE. Well, members of the committee and members of the panel, we have reached the hour of 12:30. I know all members of the subcommittee have other tasks to attend to today and I am sure you have.

I am greatly encouraged by this hearing this morning, not in the sense that it has suggested problems, which can always be discouraging, but in the sense there is a very lively interest and there are some very constructive suggestions that are being developed in this field. And so I am sure that you will be invited from time to time to participate in other hearings of this subcommittee to contribute your suggestions to specific proposals as well as to enter into philosophical discussion, and for your willingness to do that in the past as well as for your willingness to do it today, I want to extend the appreciation of the committee.

Before we adjourn, I would like to include at this point in the discussion on taxes a telegram from the Governor of Nebraska, Gov. Frank B. Morrison, who had some views to express to us on that point. (The telegram referred to follows:)

EXHIBIT 5

[Day letter]

LINCOLN NEBR., September 14, 1962.

HON. EDMUND S. MUSKIE,
Chairman, Subcommittee on Intergovernmental Relations,
U.S. Senate, Washington, D.C.:

I understand that your subcommittee has before it a bill for consideration providing for periodical examination of Federal grants-in-aid to the States and that on Tuesday of next week, a panel meeting will be held to discuss critical areas of Federal-State relations.

As Governor of one of the 50 sovereign States facing new financial demands for implementing an adequate educational program, I would like to point out that States which have adopted sales and income taxes have found that they are inadequate. Increase in property taxes in the various States which would be necessary to provide the necessary increase for demands for education would have a retarding effect upon industrial expansion, building, and capital investment.

I would like to point out that the Federal Government has in the past 30 years preempted the field of revenue collection, and I believe your committee should study areas of Federal taxation that can be relinquished to the several States.

The problem of aid to education could be solved if the States could gain revenue sources now held by the Federal Government. Thirty years ago one-third of our tax dollars went to the Federal Government. States, school districts, municipalities, etc., collected the rest. Today the Federal Government collects three-fourths of all of our tax dollars, leaving only one-fourth to be distributed between the States, the political subdivisions, school districts, and municipalities.

Pursuant to the unanimous adoption of the Governors' conference resolution in Hershey this year, I have advocated an allocation back to the States for educational purposes a portion of the income tax collected from the States for use by the several States in meeting their demands for expanding education.

I think also that consideration should be given by the Federal Government to the relinquishment of the Federal estate tax to the several States. Relinquishment of the cigarette tax or the alcohol tax to the States are possibilities in this area.

I realize that the problems of taxation are complicated, but there is much merit in the bill now before your committee to periodically examine this area of intergovernmental relations, particularly with reference to making available to the States sources of revenue needed by the States to meet the growing demands for education.

FRANK B. MORRISON,
Governor of Nebraska.

Senator MUSKIE. We will now adjourn.
(Whereupon, at 12:35 p.m., the subcommittee adjourned.)

