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90-48 DISCRIMINATORY TAXATION OF COMMON CARRIERS

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HEARINGS
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE
NINETIETH CONGRESS

FIRST SESSION

ON

S. 927

TO AMEND THE INTERSTATE COMMERCE ACT, AS AMENDED,
IN ORDER TO MAKE UNLAWFUL, AS UNREASONABLE AND
UNJUST DISCRIMINATION AGAINST AND AN UNDUE BURDEN
UPON INTERSTATE COMMERCE, CERTAIN PROPERTY TAX
ASSESSMENTS OF COMMON CARRIER PROPERTY, AND FOR
OTHER PURPOSES

AUGUST 7 AND 8, 1967

Serial No. 90-48

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DISCRIMINATORY TAXATION OF COMMON CARRIERS

MONDAY, AUGUST 7, 1967

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met at 9 a.m., in room 5110, New Senate Office Building, the Honorable Frank J. Lausche, chairman of the subcommittee, presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The meeting will come to order. This is a hearing to be held before the Surface Transportation Subcommittee on S. 927, introduced by Senator Magnuson for himself and for 10 other members of this committee.

S. 927 proposes to amend the Interstate Commerce Act by the addition of a new section 25a. The first paragraph of this new section proposes to make unlawful, as an unreasonable and unjust discrimination against and an undue burden upon interstate commerce: (a) The assessment of transportation property of any common carrier at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the taxing district, subject to a property tax levy, bears to the true market value of all such other property; (b) the collection of any tax on the portion of said assessment so declared to be unlawful; or (c) the collection of any ad valorem property tax on such transportation property at a tax rate higher than tax rates applicable to any other property in the taxing district.

The second paragraph of the proposed new section 25a would empower the Federal district courts, upon complaint and after hearing, to issue such writs of injunction or other proper process to restrain any State or local taxing authority from doing anything or performing any act proposed to be declared unlawful under the provisions of this measure.

(The bill, S. 927, with agency comments follows:)

[S. 927, 90th Cong., first sess.]

A BILL To amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act, as amended, is amended by inserting after section 25 thereof a new section 25a, as follows:

Staff member assigned to this hearing: Stanton P. Sender.

"SEC. 25a. (1) The following action by any State, or subdivision or agency thereof, whether such action be taken pursuant to a constitutional provision, statute, or administrative order or practice, or otherwise, is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful: (a) the assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property owned or used by any common carrier subject to this Act engaged in transportation of persons or property in interstate commerce at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the taxing district subject to a property tax levy bears to the true market value of all such other property; (b) the collection of any tax on the portion of said assessment so declared to be unlawful; or (c) the collection of any ad valorem property tax on such transportation property at a tax rate higher than tax rates applicable to any other property in the taxing district.

"(2) Notwithstanding the provisions of section 1341, title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, upon complaint and after hearing, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain any State, or subdivision or agency thereof, or any person from doing anything or performing any act declared by paragraph (1) hereof to be unlawful: *Provided, however,* That such jurisdiction shall not be exclusive of that which any Federal or State court may otherwise have."

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 20, 1967.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate.

Dear Mr. CHAIRMAN: We have your letter of February 20, 1967, in which you asked for our comments on S. 927.

S. 927 proposes to amend the Interstate Commerce Act, 49 U.S.C. 1 *et seq.*, by adding a new section 25a whose purpose would be to prohibit certain discriminatory tax assessments levied against common carrier property by State and local taxing authorities. A bill to achieve the same purpose, H.R. 1480, was introduced in the House of Representatives January 10, 1967. We reported to your Committee on March 17, 1966, on a similar bill, S. 2988, on which no further action was taken. The House Committee on Interstate and Foreign Commerce has held hearings on earlier similar bills: H.R. 736, 88th Cong., 1st Sess., hearings on July 28, 1964, and H.R. 4972, 89th Cong., 1st Sess., hearings held March 1 and 2, 1966.

In our report on S. 2988, we pointed out that the proposal, aimed at protecting all common carrier property from discriminatory State and local taxation, seemed to conflict with the opening clause of section 202(b) of part II of the act, 49 U.S.C. 302(b), relating to motor carriers, which states that nothing in part II "shall be construed to affect the powers of taxation of the several States." We also pointed out a conflict resulting from the language used in subsections (a) and (b) of section 1 of the bill. We note that the latter possible source of confusion has been remedied in S. 927 by including in subsection (a) a parenthetical clause limiting the prohibition and declaration of unlawfulness to the portion of the assessment based on the excess valuation. However, the possibility of conflict with section 202(b) of the act remains in the present bill. The Interstate Commerce Commission also mentioned the possibility of such a conflict in its report of February 28, 1966, on H.R. 4972 to the House Committee (Tax Assessments on Common Carrier Property, hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, on H.R. 4972, March 1 and 2, 1966, serial No. 89-30, page 3).

S. 927 is restricted in scope to "transportation property." See lines 7 and 17, page 2 of bill. Controversy over the term "transportation property" might later be avoided if it were defined in the bill so as to make clear what is intended to be covered.

From the testimony given in the 1966 House Committee hearings, discriminatory State and local taxation of common carrier property seems to be a continuing problem which some States are now trying to solve. It is not a matter

which directly affects the functions and operations of our Office and since legislative action would involve primarily a policy determination of the Congress, we have no recommendation to make concerning consideration of S. 927 by your committee.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., August 24, 1967.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

Dear Mr. CHAIRMAN: Your Committee has requested the views and recommendations of this Department on S. 927, a bill to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes.

The bill would insert a new section 25a in the Interstate Commerce Act to prohibit any State or subdivision or agency thereof from assessing (but only to the extent of any portion based on excessive values as described in the bill), for purposes of a property tax levied by any taxing district, transportation property owned or used by any common carrier subject to that Act engaged in transportation of persons or property in interstate commerce at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the taxing district subject to the same property tax levy bears to the true market value of all such other property. The collection of any tax on the portion of such an assessment in excess of such rates would also be declared to be unlawful. Similarly, the collection of any ad valorem property tax on such transportation property at a tax higher than tax rates applicable to any other property in the taxing district would be unlawful.

The bill further provides that, notwithstanding the provisions of section 1341, title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States would have jurisdiction, upon complaint and after hearing, to issue writs of injunction or other proper process to restrain any State, or subdivision or agency thereof, or any person from doing anything declared by the bill to be unlawful, provided, however, that such jurisdiction shall not be exclusive of that which any Federal or State court may otherwise have.

State and local governments derive substantial revenues from taxes on property owned by common carriers. Despite State laws requiring uniform tax treatment, in many States transportation common carriers are discriminated against as compared to other property taxpayers in the jurisdiction, due in large measure to long-established procedures for assessment of property. Some States apply assessment by a single central agency, which permits a relatively accurate method of assignment of value. However, in other States local assessment permits considerable variation in the assignment of values.

The Department of Transportation believes that common carrier property should not face discrimination in property tax assessments and collection. Such discriminations are neither fair, equitable, or justifiable. Moreover, they have been a concern of the transportation industry for many years. The scope of this problem was outlined in Part VII, chapter 1, pp. 465-66, of the report of the Senate Committee on Commerce on "National Transportation Policy" (87th Congress, 1st Session, Report 445, June 26, 1961), otherwise known as the Doyle report.

The Department recognizes that there are difficulties of tax administration and that the States and local communities rely heavily on tax revenue for their needs. However, reform in these aspects of property tax administration which affect interstate commerce should be accelerated. The present system in addition to its discriminatory aspect, results in the added burden of increased transportation costs to the consumer and undoubtedly hinders needed improvements in carrier plant and operations. While efforts by the Advisory Commission on Intergovernmental Relations resulted in the submission of draft legislation for State enactment dealing with property taxation, this approach has not resulted in rapid progress toward the solution of the problem presented by S. 927. Indeed,

the situation over the years has remained largely unchanged except where limited reforms have come about after the lengthy process of judicial review.

The Department is therefore of the opinion that the time for favorable consideration of at least the objective of the proposed legislation is at hand. It may be that a reasonable, step-by-step phasing-in period will be necessary to lighten any impact upon the States and local communities by spreading the burden over a term of several years. In the present situation, once the collection of an unlawful tax is successfully challenged in court, it may be appropriate to provide for a specific time to eliminate the tax by degrees of percentage. This could provide still further opportunity for the States to initiate reform. Our chief concern is the need for a change which will improve the financial health of the Nation's common carrier industry in a fair and reasonable manner.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 25, 1967.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate, Washington, D.C.

Dear SENATOR: This is in response to your request for the views of the Department of Justice on S. 927, a bill "To amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes."

The views of the Department of Justice on this legislation were set forth in our report of April 18, 1966 on S. 2988, a substantially similar bill in the 89th Congress. A copy of that report is attached.

We note that S. 927 resolves the ambiguity in the language of S. 2988 as to whether the entire discriminatory tax, or only the excessive portion is to be unlawful. It is now clear that only the excessive portion of the tax is declared unlawful.

The bill vests jurisdiction in the courts to restrain any State from discriminatorily assessing property for tax purposes or from collecting such prohibited taxes. However, it is not clear whether the effect of the bill is to authorize the courts to assess or levy a tax, thereby coming directly within the proscription of *Moses Lake Homes, Inc., et al. v. Grant County*, 365 U.S. 744 (1961). In view of this, litigation may be anticipated. Of course, there is no question that the courts may be authorized to enjoin the collection of an unlawful tax in its entirety, or issue other appropriate process with respect to it. Therefore, the Committee may wish to consider whether the objective to which the legislation is directed would be achieved by amending it to deal with the tax in its entirety rather than with so much of the tax as is discriminatory.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., April 18, 1966.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

Dear SENATOR: This is in response to your request for the views of the Department of Justice on S. 2988, a bill "To amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes."

The bill would add a new section 25a to the Interstate Commerce Act for the purpose of rendering unlawful discriminatory property taxes levied by States on

common carrier property. Further, the district courts of the United States would have jurisdiction to issue injunctions or other appropriate process as may be necessary to restrain violations. Such jurisdiction would not be exclusive of that which any Federal or State court may otherwise have.

Whether this legislation should be enacted involves policy considerations as to which the Department of Justice makes no recommendation.

However, it should be noted that paragraph 1(a) of the proposed new section (page 2, lines 5-13 of the bill) declares the assessment of a discriminatory property tax unlawful. Yet, paragraph 1(b) (page 2, lines 13-15 of the bill), which deals with the collection of the property taxes in question, seems to interpret paragraph 1(a) as declaring only the discriminatory portion of the assessment to be unlawful. This apparent inconsistency should be clarified.

If the Congress declares the entire assessment unlawful and prohibits the collection of any part of such assessment, there would be no legal problem with regard to this issue. On the other hand, if the Congress decides to make only the discriminatory portion of the tax unlawful and uncollectible, consideration must be given to the holding in *Moses Lake Homes, Inc., et al. v. Grant County*, 365 U.S. 744 (1961), at page 752, in which the Court stated:

"The effect of the Court's remand was to direct the District Court to decree a valid tax for the invalid one which the State had attempted to exact. The District Court has no power so to decree. Federal courts may not assess or levy taxes. Only the appropriate taxing officials of Grant County may assess and levy taxes on these leaseholds, and the Federal courts may determine, within their jurisdiction, only whether the tax levied by those officials is or is not a valid one. When, as here, the tax is invalid, it 'may not be exacted.'"

This opinion leaves unresolved the question of whether the Congress may constitutionally enact such a statute. Therefore, such an enactment could be expected to give rise to litigation to resolve this question.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

The CHAIRMAN. The first witness this morning is James N. Ogden, vice president and general counsel, Gulf, Mobile & Ohio Railroad Co. on behalf of the Association of American Railroads.

Mr. Ogden, if you will be seated. If you have anyone with you, you may call them to the table.

You may proceed, Mr. Ogden.

STATEMENT OF JAMES N. OGDEN

Mr. OGDEN. Thank you, Mr. Chairman. My name is James N. Ogden. I am vice president and general counsel of the Gulf, Mobile & Ohio Railroad, and I appear here this morning in behalf of the Association of American Railroads, whose members operate more than 95 percent of all the railroad mileage in the United States; employ more than 92 percent of all railroad workers; and haul more than 99 percent of this country's railroad line-haul freight and passenger traffic.

My purpose is to speak in behalf of the measure S. 927 now before the committee for consideration. The railroad industry heartily endorses this measure. We support it now as we have for some 6 years in which this or similar measures have been before the Congress, either in the House or in the Senate.

I would like at this time to express the appreciation of our industry for the interest of the Senators, authors or coauthors of this measure and previous measures designed for this purpose.

As the chairman has so clearly pointed out, the purpose of this bill is to declare that a portion, and I wish to emphasize portion, of the

tax assessment—taxes on common carrier transportation property—shall be declared unlawful as constituting an undue burden on interstate commerce, measured by two tests. That is, where the discrimination grows out of an excessive assessment, meaning an assessment on carrier property at a level of value that exceeds the level of assessment to value of other property in the taxing district. Or, if you will, where the tax rate is designed or has the effect of discriminating against carrier property and is higher than the rate on other property in the taxing district.

The bill goes further and provides the mechanics for protecting the carrier in the event either of these two forms of discrimination are found to exist. This protection extends to an action in the Federal courts in which the carrier must sustain the burden of proof to show the facts and its qualification for relief. And in the event proper showing is made, the courts would have adequate authority to fashion an appropriate remedy, including injunction, against the excessive portion of the assessment and tax. In this regard, this measure, I think, is really perhaps unique, in that ordinarily—unless there is agreement to the contrary—it is almost impossible to contest only a portion of a tax.

The CHAIRMAN. Mr. Ogden, at this early stage, I just want to ask a question so that the record will be clear. The purpose of this bill is to declare unlawful any assessment made either by a State, county, municipality, or other local taxing authority, that is not uniform in operation with respect to all types of property of a similar character in the taxing district.

Now, to put it differently, that is, whenever assessment is made that is not uniform in the taxing district and there is a higher rate, a higher assessment, imposed upon the railroad property than on other property, that assessment shall be declared unlawful by this bill.

Mr. OGDEN. Senator, I would like—you almost stated it with only one exception, the unlawful portion is only the tax related to the excess of the assessment or rate on carrier property over the assessment or rate on other property.

The CHAIRMAN. Well, I think it is self-evident it is not declaring the whole assessment unlawful, unless—

Mr. OGDEN. Yes.

The CHAIRMAN. Now, No. 2, it deals with the rate, that is, of the tax that is imposed. And this bill would declare unlawful that portion of the rate that is in excess of what is imposed generally upon property in the taxing district.

Mr. OGDEN. Right. Yes, sir.

The CHAIRMAN. The objective of the bill is to procure uniformity of assessment in the levying of the rate.

Mr. OGDEN. Insofar as carrier property is concerned. The bill does not concern itself with how high the rate may be on anyone. It only relates to the proposition of treating the carrier property no differently, no worse, as far as the assessment or rate is concerned, than other property. It doesn't disturb the State's power to tax property, including carrier property, as heavily as it desires. It only says that you treat the carrier property no different in manner than other property is treated.

The CHAIRMAN. Now, that is the substantive law that you want adopted. But added to that you provide the procedure—the procedure through which the substantive law's objective shall be achieved.

Mr. OGDEN. Yes. That is through remedy in the Federal courts, with the power to fashion a remedy that would be adequate for the purpose. The CHAIRMAN. I see.

Mr. OGDEN. Now, of course, to this committee, steeped as it is in matters pertaining to carriers and particularly railroads, some of this may seem unnecessary, but I do think it important to point out that railroads are just one of five classes of carriers covered by this act. The act covers all carriers serving within the Interstate Commerce Act, which naturally includes others besides railroads. But we are speaking here for the railroad industry for several reasons: One is, I represent the railroads. The other is, I know more about them. And finally, I think it is pretty well conceded that railroads are the principal parties that actually need this legislation and to which it would no doubt apply.

And that grows out of a number of facts. As we all know, railroads are a business that require tremendous property investments. For instance, in 1966 the railroad investments in this country exceeded \$36 billion, and that was spread over an excess of 200,000 miles of railroad throughout the 48 States, which excluded Alaska and Hawaii. That tremendous property investment is largely immovable—railroad lines are not picked up and moved to another location if they don't like the tax or other atmosphere in the location they are operating. They still have to stay there. They cannot be moved around. And they are easily identified and readily reached by the tax assessor.

And over the hundred years that we have had railroads in this country, it has become, obviously, quite easy to reach them as we will attempt to demonstrate.

Now, this vulnerability of our industry in this area, as we see it, will become increasingly important and pose increasing problems in the future. It is certainly clear that State and local governments, governing bodies, face larger fiscal problems in the—say, in the next 10 years. And the necessity of finding tax revenue with which to meet those commitments, current and anticipated, will clearly intensify the problems that are now elements in this field.

Now, as we all know, property taxes are the result of assessment, multiplied by rate.

And as a response to the Senator's appropriation question, we pointed out that the purpose of this bill is to reach discrimination whether by rate or by assessment or both. You might say we sought to cover both parts of the problem. In the event the assessment is out of line, we reach that discrimination with a prohibition against the excessive portion of the assessment—and in the event the rates are out of line, we do the same for the excessive portion of the rate.

My prepared statement contains a rather detailed description of what is meant by equalization and how the excessive portion of the rate or assessment would be determined. And it also contains a rather careful explanation of what is meant by true market value and the accepted meaning given that term generally by taxing administrators throughout the country. This information is supplied for the purpose of making certain that if the Congress sees fit to pass this or a similar measure, that there would be guidelines on the basis of the hearing, to indicate what was meant by those terms.

Now, we find that in regard to the tax discrimination, it seems to be a matter that over a long period of time there has been continued and persistent discrimination in the assessment against railroad property.

The material that has been appended to my statement that I have handed in here contains an appendix that undertakes to bring such a study down to date. We have had previous studies. I think this is the fifth in a series. The first such study was one that appeared in the report on national transportation policy, that is sometimes referred to as the Doyle report, in 1961. And there, as here, the amount of discrimination is shown to be very substantial. Now, in fact, even before the Doyle report and in the report in the House on—except as shown by House Document No. 160, dated September 19, 1944.

Senator PEARSON. Mr. Ogden, may I ask a question?

Mr. OGDEN. Yes, sir.

Senator PEARSON. Is it discrimination in the rate assessed on the valuation on the property, or is it also discrimination in the property tax? I recall some years ago having some brush with this problem. Don't you have a problem with what rolling stock is within the jurisdiction.

Mr. OGDEN. Those are problems, Senator, that have to do with the allocation—of finding how much of the property is in a given taxing district.

Senator PEARSON. Does that vary from place to place?

Mr. OGDEN. There are some problems of that nature, but this measure does not deal with it.

Senator PEARSON. This bill doesn't affect that?

Mr. OGDEN. No, sir. It's good administration. That's a technical question that is usually worked out. It doesn't present any real problem.

But in the House document—in House Document No. 160—that I referred to, it was stated that the officials of approximately half the States readily concede that railroads are being overtaxed because of inadequate equalization.

I have always thought that one of the reasons that that might have occurred was because of the lack of adequate tools to determine the level of assessment and to make what you call ratio studies. But the hero is the Bureau of Census. In 1956 the Bureau made such a study for the entire United States, by States, and published it in 1960.

And then, of course, it was available for this committee through the Doyle report. The studies are brought up to date every 5 years. They provide a very fine objective tool for any tax administrator, and it is largely through this means plus supplementation in local areas, that we are now able to pretty accurately measure what is going on and to speak with particular authority in this area.

I would like to emphasize that it is not the purpose of this study to single out or criticize any State, nor is it our purpose to comment on the States not listed or suggest the absence of tax discrimination in the States that are not listed. Rather, our purpose was and is to show a pattern or the practice of discriminatory action sufficient in scope to warrant the attention of Congress, and directed toward the subject of interstate commerce, over which Congress has full control and responsibility. In making these statements, we have used only the most conservative figures in our exhibits, and I wouldn't feel too worried by saying that I think the actual discrimination would probably be much more or much greater.

I think, too, that it is clear that the amount of this discrimination in terms of dollars has grown to an impressive extent since these measures have been before the Congress the last 6 or 7 years. We estimate that in

excess of \$300 million at least is represented by taxes that would not have been extracted from the industry had there not been—had they not been the victims of this kind of action.

I think it is quite clear that legislation forbidding discriminatory taxation of carrier property definitely should be made a part of the Interstate Commerce Act. Undue burden on interstate commerce, following discriminatory tax practices is clearly comparable to undue burden on interstate commerce resulting from the discriminatory action of State authorities in failure or refusal to act in a reasonable manner toward railroad rates and services.

S. 927 follows the language of section 13(4) of the Interstate Commerce Act in declaring that prescribed action by any State or subdivision or agency in taxing common carrier property on a basis higher than other property in the same taxing district is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden on interstate commerce.

The CHAIRMAN What page are you on now?

Mr. OGDEN. I was looking at page 9, Senator. I am trying to sort of follow along. Right in the middle of the page.

The CHAIRMAN. Well, I'm not urging you to hurry in this matter, because I want you to present your case—

Mr. OGDEN. Yes, sir.

The CHAIRMAN (continuing). Fully and completely. And I tried to follow your paper, but you moved along quite rapidly. I appreciate it, of course, but—

Mr. OGDEN. Senator, I have this—this whole case is covered really quite fully—

The CHAIRMAN. Well, don't assume that all of the members of the committee are going to read the report.

Mr. OGDEN. Senator, I would be happy—

The CHAIRMAN. And don't assume that I am going to do it. I would rather have you cover it fully now.

Mr. OGDEN. Yes. Well, I would like then to point these things out to you: Actually, our industry needs this remedy, just to put the matter bluntly and frankly. We need it, first, because we don't have an adequate remedy, and I say that advisedly.

Attached to this statement is a list of cases, more or less recent, where attempt after attempt was made to get at this proposition. Sometimes we win, but nearly always after years and years and years of very expensive litigation. I believe it was Gladstone who said that "justice delayed is justice denied." And we have certainly experienced that in this field.

In one Midwestern State with which I am personally acquainted and interested in, we started litigation in this area in 1952 and after some 400-odd cases were filed and Lord only knows how many of these—some 9 or 10 of them went to the State supreme court. We are still in the attitude of trying to bring to trial cases in four counties, and involving, for our small company, over half a million dollars in back taxes. And I don't call that much of a remedy, even though we can get in court. Now, that is No. 1. We don't have a remedy that is worth a hoot.

Now, the next thing which I think we need—

Senator PEARSON. Mr. Ogden, have you prevailed in any State?

Mr. OGDEN. Oh, yes, sir. We prevailed, as in the case I just mentioned, we prevailed. We have collected a substantial amount of money, but it has cost us hundreds of thousands of dollars in expense and a tremendous expenditure of time.

In one county court—we had to do all this on a county-by-county basis—in one court, only a small amount of money was involved. Our home office is in Mobile, and we had people from distant places, all around—I don't care about identifying the county unless you want to know, because I am not trying to call names or anything. But we had over 43 trial days in this one little particular place. And there wasn't any real issue of fact. The trial days would constitute our coming from Mobile to be there for a hearing on Friday morning only to find out that the hearing had been put off until Monday morning. And then by Monday morning they would have to see if they could get to it at the end of the week. Then, when we reached that point, it was put over for 2 weeks. And that kept up for not just two or three times, but for years. And that—

Senator PEARSON. I think my State makes its assessments at the State level. Is it the case in many States to do it county by county?

Mr. OGDEN. That is quite true, Senator. That is one of the reasons why we think this measure is good for this reason, regardless of whether the assessment is made at the State level or where it is made.

There has always been a problem of how the issue will be brought to trial, whether it is necessary to enjoin the certification of the assessment or to enjoin all of the tax collectors at the county level from sending out tax bills or just where it comes about.

In this measure there would be one clear, easily recognized and applied method of getting in court. And instead of spending all of the State's and the taxpayers' time and effort to try and get to the issue, the time would be spent in determining the issue.

Certainly, the railroads' experience has been that more time and effort is spent on finding the right court and how to get in it and then staying there, than on determining what the issues are and what the facts are and whether or not you have actually proven your case.

Now, the latter is what we should do, not the former.

The CHAIRMAN. In the absence of a statute, what is the basis of law, whether constitutional law, common law, or otherwise, in which the courts have ruled that discriminatory assessment or rates are unlawful?

Mr. OGDEN. Well, if I understand your question—

The CHAIRMAN. Well, that is, when you go in before a court, you say to the court, "This is the law, the constitution so provides. The common law so provides," or "The statutes so provide." What is the basis of law on which your victorious decisions have been achieved?

Mr. OGDEN. Based on the State law and their own State constitution. I would say, generally speaking, that State laws on their face and State constitutions in this area are quite fair and quite adequate. It is the manner in which they are administered and the lack of clear types of remedies.

What I have said about State law, in terms of the ultimate recovery, has to do with the ultimate question and not the procedural question. Procedurally, Senator, the State laws are very unclear. Hardly any

two of them have any similarity to each other. In that area there is complete confusion. And if there is any desire on the part of the people on the other side—the State authority—to resist, which is always natural—the desire to resist—usually such resistance takes the form of activity in the procedural area, not on the merits.

On the merits, yes, generally speaking I would say State laws are in good shape, the constitutions are good.

The CHAIRMAN. What position do you find yourself in in those States which classify property, and in the classification do not—do apply a uniform rate and assessment to the particular classification, but that rate and assessment is not the same as it is in other classes?

Mr. OGDEN. Yes, sir.

The CHAIRMAN. I know many have, this means real estate, that is one class; intangible personal property, stocks and promissory notes, another class; personal property, a third class—that is, tangible personal property.

Mr. OGDEN. Yes.

The CHAIRMAN. What problems has that created, if any?

Mr. OGDEN. Senator, that would, without the help of this measure, that would create an absolutely impossible problem for railroads. Under the law, as I understand it today, a State by constitution can provide for classification of its property for tax purposes—and some States have done so, not many, but some.

The CHAIRMAN. Well, Ohio has, I think.

Mr. OGDEN. Well, I undersood that. I am not too acquainted with Ohio, but I understand that there is possibly some classification authority there. As far as general law is concerned, without this bill you can classify railroads as one class and tax them any way you wanted to. And we would have absolutely no protection whatever that I know of.

In *N.C. & St. L. Ry. v. Browning*, a case coming from Tennessee, the Supreme Court said, I think through Justice Frankfurter, "You can put railroads in one slot and something else in another slot and tax them any way you want to if you have constitutional classification." And that is one of the things that I wanted to mention.

The Senate should seriously consider this bill because of a growing trend toward classification, where it does not now exist. I don't mean to suggest that all classification is bad. I mean, merely to say that it too can be abused if the legal authority is there. There has been State after State in the last 24 months where, in response to what appeared to be successful litigation by railroads or other tax people, they have threatened classification. In the State that I come from, and I feel warranted in mentioning my own State, the morning that we came up here, came to Washington to work on this case, my morning paper had a large advertisement in it, a copy of which is appended to my statement. The advertisement urges a constitutional provision that would permit Alabama to classify railroads and assess them at 40 percent and other property to be classified at a lower percentage on down to 15 percent. That is a direct threat growing out of railroad litigation in this area in which the State didn't even take issue with the facts, because, actually, there wasn't any issue in the facts. The facts were clear. The railroads were being assessed at a substantially higher percentage than property generally throughout Alabama. Everybody in Alabama knows it.

And that is just what we are talking of here, the threat of classification. Because as far as I know, I don't know of any defense we would have if Alabama would change the constitution by the amendment the voters would be asked to vote on. Our Alabama Senate at this time has already passed that bill.

The CHAIRMAN. I think I am correct in my recollection of a law, that is, that you have three classes of property, basically, real property, tangible personal property, and intangible personal property. Now, then, under the classification principle, let's assume that there is a classification on the basis of real, tangible personal, and intangible personal property.

Mr. OGDEN. Yes.

The CHAIRMAN. Now, my question to you is, Can the classification of your property again be classed—subclassified? That is, the real estate on *x* street is subject to a certain formula of assessment and rating and the railroad is subject to a different classification of assessment and rating?

Mr. OGDEN. That would be possible, Senator, though I would think that the constitutional provisions would have to be pretty broad to permit such subclassification. And, of course, a lot would depend upon the implementing legislation. It may at least reach a point where the question would be is the classification reasonable?

I am merely pointing out that the Supreme Court of the United States has said pretty clearly that putting railroads in a class by themselves is not unreasonable where classification is authorized.

The CHAIRMAN. Well, if the Supreme Court has said that, then it has declared that putting the railroads in a class by themselves comes within the law, then the classification must be reasonable. And would that then allow a different formula of assessment and a different rate of levying than is applicable to ordinary real estate?

Mr. OGDEN. That would be my understanding, sir.

That is why I think we need the protection. I don't know what we would do if our property wasn't devoted to interstate commerce. And, of course, that is the basis on which we are here. It is devoted to interstate commerce and we need the protection and we are asking for it.

I think we need it because of the extent of the discrimination—I passed over that—in terms of dollars and in terms of the extent to which it reaches our property. That fact that we have only shown a small number of some 20-odd States currently doesn't mean that railroads operating through those States stop at the State line. The tax bill that is imposed on railroad A in State B has to be borne by the public that that railroad serves in the other States where there is no discrimination.

The CHAIRMAN. Now, you have said you have some 20 States. Which States?

Mr. OGDEN. That is in my—wait a minute. Excuse me just a minute, sir.

That is appendix C, Senator. And let me see—

The CHAIRMAN. Well, explain the appendix. I see the—

Mr. OGDEN. Yes, sir. It is a tabulation of States that shows for the year 1965, in the first column, of course, the name of the States. In the second column is the railroads' ad valorem taxes for that year. That is all the railroads' ad valorem taxes in that State. The next is all

other State and local taxes in that State. And the fourth column is the percent value at which railroad property is assessed in that State for that year. The next column is the estimated reduction in railroad ad valorem taxes if railroad assessments had been made at the same percent of value as were the assessment of property of others. And, of course, finally the percentage—the last is the percentage of the tax assessment that is considered excessive. That is in the same format—as I say this is the fifth such study. For instance, in 1960 and successive years through then. This is for 1965.

The CHAIRMAN. Does this appendix C cover all types of property of the railroad?

Mr. OGDEN. Yes, sir. All the property, all the property taxes of the railroad, and in the second column, all of the taxes of the railroad at the State and local level.

The CHAIRMAN. And the conclusion to be drawn from this tabulation is that if the railroad were assessed and taxed on the same basis as other property of a similar nature, their contribution to the tax collection would have been \$71 million less in these 20 States?

Mr. OGDEN. That is correct.

The CHAIRMAN. I see.

Mr. OGDEN. Now, I have explained, of course, the extent to—

The CHAIRMAN. What page are you on now?

Mr. OGDEN. I had gone back a little. I really was just interpolating from some notes here that I had. I had, unfortunately, departed from my text, but—

The CHAIRMAN. Stay with your notes, then, if you so desire.

Mr. OGDEN. Well, if you don't mind, I'll wait until I get over to a page where I can get back. I made the mistake of getting off the record, Senator, and I'm having a hard time getting back on it. But I will try.

I pointed out in the beginning, the vulnerability of our industry, the fixed nature of our property, the fact that we cannot move, and cannot even go out of business without the consent of the Interstate Commerce Commission; then, I think as a practical matter, I think we all have to realize that railroads don't vote. That doesn't help us either in any local matters that involve our taxes.

I think the remedy here would not seriously affect State and local finances. The railroad tax payments generally in any State would hardly ever exceed 3 percent of a total State and local tax gatherings. And, of course, here the amount involved is not all of the State and local assessment, but only the excessive portion of the State and local taxes. That excessive portion, as shown by these figures, would perhaps in no event, and even in the ultimate, would not exceed over half or even be as much as half. So, really, we are talking about something in the neighborhood of 1 percent or $1\frac{1}{2}$ percent at the most. So it is not a serious fiscal problem.

Senator PEARSON. Have the States pulled away from ad valorem property taxes?

Mr. OGDEN. No, sir. They haven't pulled away from it, Senator. The quantum and value of other properties have pulled away from the railroad properties. Fifty years ago the property and railroad tax bill was a very, very significant item to local finances and State finances. It is not that significant now. And many people don't realize it. But we find that, on the general average, that about 3 percent of the State and local finances depend on railroad taxes of one kind or another.

Senator PEARSON. I recognize that at the State level, because in my own State the State——

Mr. OGDEN. Yes, sir.

Senator PEARSON.—has, as I say, pulled away from ad valorem taxes. I think they have gone back now to 1 or 2 percent, with which they try to balance the budget.

Mr. OGDEN. That's right. Some States don't any more at all.

Senator PEARSON. But the local school district and the county and all of the rest of the local taxing subdivisions rely on this entirely as ad valorem property tax, do they not?

Mr. OGDEN. Quite largely. I didn't mean to say that they didn't. I am only trying to point out that the railroad property in a given taxing district no longer occupies the significant place that it did years ago.

In instance after instance we have had suggested to us that if the railroads don't pay all of the tax the schools will close. I can say to you categorically, I have never seen one close. I have never seen one, as far as we know, so seriously embarrassed on account of a railroad tax case where all or any part of the taxes were withheld. It is just something that doesn't happen. Many of us just don't realize what time has done in terms of the growth in the country and the tremendous explosion in other areas of values and property. The railroad property is still on the same track and still pretty much the same property and struggling with the same problems and not making any more money now than we were then, not as much frequently. And so, our values are not as significant. And our contribution, while large, is not as great, relatively, as that of others. That was all I was trying to say.

Now, I would like to, on the question of constitutionality——

The CHAIRMAN. Before you move into that subject, I'm looking at one of the exhibits attached to your paper——

Mr. OGDEN. Yes, sir.

The CHAIRMAN. An article taken out of the Montgomery Advertiser-Journal of Friday, July 21, 1967. That article describes legislative activity in the State of Alabama, and it points out that four bills were introduced as a package, and I will now read it:

The bills introduced Tuesday and pushed through a 9 a.m. committee hearing Thursday would classify property and set the rate at which it would be assessed for taxation as follows: Utilities, 40 percent; personal property, 30 percent; residential, commercial and industrial, 25 percent; farmland, 15 percent.

Is this the type of operation against which you are complaining in your testimony here this morning; that the result of classification does not produce equality of treatment to the taxpayers within the State?

Mr. OGDEN. That is correct, Senator. And I am also complaining a little further. The next paragraph points out that the bill would require a constitutional amendment since the present organic law requires that all property be taxed on the same basis. If this constitutional amendment were passed, the bill thus would implement the Constitution.

As I explained earlier, as we see it, without the protection of S. 927, we would have no protection against this action. We would be at 40

percent, and the other properties would be as you have read. That is exactly it.

Alabama is not the only State that has threatened this, just as plainly as this statement here. There are quite a number of others that have done the same thing or threatened—they haven't done it, but threatened to do it. And it could be done if the States' constitutions were changed.

The CHAIRMAN. Haven't the courts held that the provision in the constitution that there must be equality of taxation does not prohibit classification that is reasonable?

Mr. OGDEN. No. If the Senator will excuse me, I don't understand. Of course, the courts have not held that. My understanding is, that the so-called equality clause in a State constitution would prohibit classification. But a State constitution could provide for classification.

The CHAIRMAN. All right.

Mr. OGDEN. Alabama has an excellent constitution right now. It would have to be amended as this article points out.

The CHAIRMAN. All right, now. Proceed to discuss the constitutional question.

Mr. OGDEN. On the constitution, to use—I'm on page 10, Senator.

It is clear that Congress can constitutionally enact a measure such as this.

Two recognized authorities in the field of constitutional law and State taxation, Paul J. Hartman and Paul H. Sanders, both of Vanderbilt University School of Law, have supplied an exhaustive opinion on this question as related to similar legislation pending in the 89th Congress (H.R. 4972).

We have provided copies for the staff.

These gentlemen have reviewed S. 927, and Mr. Sanders is here and will testify in support of its constitutionality.

Mr. Hartman is a professor of law specializing in State and local taxation law. He is the author of "State Taxation of Interstate Commerce," a very readable book on that subject, and has written numerous law review articles on the subject.

Mr. Sanders is also a professor of law, teaching courses in constitutional law and labor law. He is the author of various articles and publications in the constitutional and public law fields.

Now, comprehensive biographical data on both these gentlemen may be found at the end of their printed memorandum.

We have also sought and obtained the views of four noted and qualified authorities in the field of taxation, economics, and transportation as to the appropriateness, adequacy, desirability, and need for this legislation.

These experts are Gen. John C. Doyle of Texas, Dr. Harold M. Groves of Wisconsin, Mr. Broley E. Travis of California, and Dr. Rolf A. Weil of Illinois.

Each man was supplied with copies of S. 927, the report of the committee hearings, that is, the two previous committee hearings in the House, and the Hartman-Sanders opinion relating to the constitutionality of the measure.

General Doyle, who, prior to his retirement, served as director of transportation of U.S. Air Force, occupies the McDonald Chair of Transportation at Texas A. & M. and served as director of a special

study group on transportation policies in the United States for the Interstate and Foreign Commerce Committees of the Senate, which reported on the subject in January of 1961.

Full biographical information appears immediately after his letter of February 7, 1966, and July 14, 1967, which are attached hereto as exhibit 1.

Dr. Groves brings to bear on the issue a comprehensive knowledge of economics and public finance. He is a professor of economics at the University of Wisconsin; has served Government in both appointive and elective capacities; has written extensively on finance and taxation; and served a term as president of the National Tax Association.

Extended biographical data appears immediately following his statement, which is attached as exhibit 2.

Mr. Travis is a consulting valuation engineer in Sacramento, Calif. He is a former chief of valuation engineer for the California State Board of Equalization. He has assisted the States of Oregon, Colorado, New York, Utah, and Idaho in their railroad assessment work. He has been employed as an expert by railroads in the preparation of valuation and equalization cases in Missouri, Illinois, South Dakota, Iowa, and Ohio, since his retirement from his position with the State of California in 1962.

More detailed biographical data appears as a part of Mr. Travis' statement.

Dr. Weil is president of Roosevelt University; a former research analyst for the Illinois Department of Revenue, author of articles on property tax and equalization; and a specialist in public finance and economics. Although unable to have General Doyle or Dr. Groves here in person, we are fortunate in being able to present Mr. Travis and Dr. Weil, both of whom will appear later.

For the most part, State relief statutes are vague and confusing and have very little to commend them in the way of uniformity of either construction or application. With few exceptions, they are designed to exhaust the litigant in a web of procedural confusion and thus effect his ultimate defeat.

The appendix is referred to next. I have already referred to counsel, that is, appendix D is a memorandum dealing with relatively recent railroad-State tax litigation and to which is attached a list of State cases. I would like to point out that, for the most part, the decisions listed were adverse to the railroad, or the ultimate result did not afford material relief or the litigation is still pending. A few cases which did not involve railroads have been included because of their immediate or potential effect on railroad assessments. This material is not offered as being all inclusive. However, it points up an alarming trend to legalize discriminatory taxation of railroads. Alabama, Montana, Kansas, Kentucky, and Tennessee furnish striking examples of what has been done or threatened in this area.

Railroads frequently find themselves in a perilous position as a result of State discriminatory property taxes, and this is illustrated in the newspaper clippings which I have attached here as appendix E, clippings from Alabama, Kentucky, Louisiana, and Tennessee newspapers.

It seems clear that the proposed measure, offering as it does a clear, direct, and simple remedy designated for uniform application by the

Federal courts is highly desirable. Employee support for S. 927 is indicated in a strong editorial on the subject appearing in the June 1967 issue of *Railway Employees Journal*. A copy is attached as appendix F.

It should be kept in mind at all times that the measure here under consideration addresses itself only to supplying a procedure by which discriminatory taxes may be corrected. It is only available to the taxpayer capable of bringing himself within its terms. It is not self-operative, and neither proposes any duty nor confers any right on the Federal Government to administer State taxes. The offensive taxes must be proven to be such by competent evidence and in a court of law. Absent such a proceeding and proof by a complaining taxpayer, the bill here proposed would have no effect whatever on any act of any State regarding any tax at any time.

Now, I didn't actually mean to lengthen this statement. At the same time, at least I referred to the basic material which I know the committee has. I have discussed it with the staff and pretty much put it in the statement just for the benefit of the staff in the event they have not—didn't have it, we could make it available. That is, the item of the Doyle report, being a very fine report, I would say a most comprehensive report of this committee on national transportation policy. It is—I will be very frank about it, it is considered a textbook on the subject, it is a very fine report.

And then, of course, the U.S. Bureau of Census "Report for Taxable Values on Property" is a very excellent work and one that is most helpful. That was for the 2 years, the 1957 report and the 1962 report.

Then, of course, there is the report by the Commission on Intergovernmental Relations in 1963 in this area. That is very helpful.

I realize that this is a complicated area in which any facet to it might be worthy of additional information. We have tried to make this presentation as complete as we could, what with my statement and the other witnesses we have here, but if there is anything further that should develop that the committee would want to inquire into or would like to ask us for, we would be happy to try and furnish it.

I thank the chairman most sincerely for this opportunity to appear.

The CHAIRMAN. Senator Morton.

Senator MORTON. In one of your appendixes you refer to a news clipping that describes an action taken by the Kentucky State Legislature. It follows the Alabama insertion. It is the first item under appendix E.

Mr. OGDEN. Yes, sir.

Senator MORTON. It is dated March 19, 1966, from the *Louisville Courier Journal*.

This article by Allen Trout accurately describes, I believe, what took place. We had a ruling by the court of appeals, the highest court in Kentucky, which said the property had to be assessed at a hundred percent of its value. And the ruling of the court said that the rate of taxes should be rolled back so that the yield would be virtually what it was.

Traditionally in our State, railroads and other public utilities were assessed at 60 percent of value, and property generally throughout the State at from 20 to 40 percent. Therefore, if court order was followed, and it had to be followed, everything goes up to a hundred and all rating down. The Governor felt, and the legislative council felt,

that there would be a loss of about \$5.5 million in tax revenues because the rollback in the rate would relieve the public utilities and the railroads by about that much. So the legislature was just about to adjourn when this transpired.

The bill was immediately tacked on to an already House-passed bill which was a device of going through the second reading. I think they put it on a bill to rule out the electric chair in one of the prisons in the State and put in the gas chamber and they used it as the device to accomplish this.

Mr. OGDEN. Would you say that is appropriate?

Senator MORTON. It was a bill sitting there. It may not have been appropriate, but it was the most convenient vehicle that we had.

Would this proposed bill that we have before us now, S. 927, give to the railroads relief, in view of the situation in Kentucky now, and if so, do you have any idea of how much that would be?

Mr. OGDEN. The extent of the railroad reduction would be substantially less than the total \$5 million because that included all of the other utilities.

Yes, this bill, if it were enacted into law, would certainly be desirable and would certainly prohibit the higher resulting rate that was placed on railroad property. I know. We operate in Kentucky and we have some rates that as a result of this bill are 50 percent higher than other property right alongside our track. But the dollar amount, Senator, for railroads—

Senator MORTON. In your statement you referred to a table.

Mr. OGDEN. Yes, sir.

Senator MORTON. This is 1965. According to this table from Kentucky the present percent of values at which railroad properties were assessed in 1965, 35 percent—

Mr. OGDEN. The figure I have just been handed, Senator, I will read. The major Kentucky railroads estimate that House bill 320 rates—the bill you are talking about—increases the 1966 railroad ad valorem tax revenues by \$436,000.

Senator MORTON. Do I gather that S. 927, if enacted into law would result in a reduction of that amount?

Mr. OGDEN. That is right. If the conditions were still precisely then as they are now; yes, sir.

Senator MORTON. That bill that you refer to, the House bill of Kentucky, was passed in 1966. Conditions have not changed much since then.

Mr. OGDEN. That is right.

Senator MORTON. So far as Kentucky is concerned, what we are talking about is in the area of \$425,000.

Mr. OGDEN. That is true purely on the rate. Yes, sir; that is correct.

Senator MORTON. If all rates went up in the State, yours would go up along with everybody else's.

Mr. OGDEN. You are correct.

Senator MORTON. Thank you, Mr. Chairman.

The CHAIRMAN. In the Kentucky case, why can't you now challenge the inequality of the rate, as supposedly achieved by this legislative action mentioned in your paper?

Mr. OGDEN. Senator, I understand that it probably will be. Our particular company will not because we go through one tiny end of Kentucky. I doubt if we have \$5,000 involved. We have only a very

small portion of our property in Kentucky. I do not understand it will be challenged.

The CHAIRMAN. Do you know whether in Kentucky there is a provision in the Constitution that taxes must be imposed upon an equal basis?

Mr. OGDEN. I understand that there is.

The CHAIRMAN. Do they have a provision allowing classification in the Kentucky Constitution?

Mr. OGDEN. I don't think they do. That is my understanding, that they do not.

Senator MORTON. The discrepancy in Kentucky between the percent of value of railroad property and percent of value of property of others is very slight compared to other States. It is about 14 percent. In some cases it goes as high as 70 percent.

Mr. OGDEN. Senator, I might add this: Over the years Kentucky had been narrowing the gap. The difference is small, but this rate rollback, Senator Morton, that is largely the reason Kentucky is on this list. We couldn't overlook the rate rollback.

Senator MORTON. I am not criticizing that. I realize that. I wanted to clarify the point that over the years there may be a narrowing of the discrepancy.

Mr. OGDEN. You are quite right.

The CHAIRMAN. While we are talking about appendix C, I note that the percent of value at which railroad property is assessed in 1965 is 100 percent, and percent of value at which property of others is assessed is 55 percent; is that correct?

Mr. OGDEN. That is our information; yes, sir.

The CHAIRMAN. Proceed.

Senator PEARSON. Do I understand that this bill would obviate or declare unlawful the power of a State to classify property for purposes of taxation?

Mr. OGDEN. No, sir; but it would not permit a State to discriminate against a railroad through such classification.

Keep in mind, Senator, that the bill is still a remedial bill. It doesn't declare anything to be wrong. It merely provides a remedy, and if you can make the proof then it would characterize the result. But even there it wouldn't vitiate any action that the State had taken except only to the extent that it operated discriminatorily against the railroads. That is all. The rest of it would stay as it was.

Senator PEARSON. I don't see how this bill would do you any good unless it would break down any classification that the State may have implemented. You don't complain about unequal taxation among other railroads within a given jurisdiction. You do not complain about unequal taxation in regard to other railroads within a given jurisdiction, do you?

Mr. OGDEN. No, sir. That is not the purpose of this bill. I haven't found that yet. Say, for instance, one rate on one railroad and a different rate on another.

Senator PEARSON. I didn't understand you to be complaining about that.

Mr. OGDEN. No, sir.

Senator PEARSON. What you complain about is the situation where utilities and other railroads are taxed at 40 percent, real property

for residential and industrial purposes say at 25 percent, and farmland at 15 percent.

Mr. OGDEN. That is right.

Senator PEARSON. I take that to be a breakdown on the part of the State to classify property for purposes of taxation?

Mr. OGDEN. It would be to the extent that they could not—

Senator PEARSON. I am not disagreeing with your position.

Mr. OGDEN. I don't mean to be picking about it, but I meant only that the State could do whatever it wished to do in relation to classification as far as others are concerned, but it couldn't use the power of classification to discriminate against the railroad. That is, it would relieve the railroads of the excess tax growing out of the classification. The rest of the State action remains the same. States can classify farms and homes and do it any way they want to.

The CHAIRMAN. Does what you have said mean that carriers could not be classified into a separate category?

Mr. OGDEN. It would mean carriers could not be reportedly classified if the result were to tax them greater than others, and then to the extent of the excessive tax. That is the same thing as saying they couldn't be classified discriminatorily, if the result were discrimination. The only reason I continue to say it the other way, Senator, is that the tax bill that would result from classification, would still have to be paid by the carrier up to the point that it will equal the other taxes. But above that point the carrier would not have to pay that tax.

Senator PEARSON. Let's go back to the Alabama case. And I make reference to the clipping where on Tuesday they introduced a bill and on Thursday the committee there passed it out and they have utilities at 40 percent, personal property 30 percent, residential, commercial, and industrial 25, and farm land at 15. Under this bill, if passed, railroads could not be taxed higher than what other classification here? Farmlands?

Mr. OGDEN. The average of all of them.

Senator PEARSON. But the utilities would still be at 40 percent?

Mr. OGDEN. That is right. We are not representing the utilities here. We are representing the railroads.

The CHAIRMAN. Any further questions?

Mr. SENDER. May I have your interpretation for the record on the following matter raised by Senator Pearson? Under paragraph (1) (a) you compare the assessment ratio that the property tax levy bears to the true market value of all such other property. Is that the provision in the law to which your reply to Senator Pearson referred?

Mr. OGDEN. Yes, sir. And that is appendix B, under the title "Equalization," to explain what that means and how it would be arrived at.

Mr. SENDER. With respect to (c), it reads, "The collection of any tax at a tax rate higher than tax rates applicable to any other property." Would that mean if there were a homestead exemption, as stated in the Montgomery Advertiser article, that it would be any other property in the taxing district?

Mr. OGDEN. It is not my understanding that the purpose of this bill would be to disturb any of the traditional exemptions such as for churches, or homesteads, or the like. We are really trying not to, you

might say, not to put railroads in a special class. We are trying to get out of being in a special class. That would not be my understanding.

Senator PEARSON. You mean higher than any other tax property?

Mr. OGDEN. That is right.

Senator PEARSON. If counsel will yield, I don't read this to mean an average of taxable property, as you just testified. I would interpret it—

Mr. OGDEN. On the rate?

Senator PEARSON. As the lowest level of any taxable property.

Mr. OGDEN. I would think that it would be at the lowest level of taxable property for the purpose. Rates, of course, are related to purpose. For instance, if it was the police and fire protection purpose, I think that a literal interpretation of this would give the carrier property the same rate as whatever the lowest rate for police and fire protection is, in township A or whatever city it is. The problem here, Senator, is dealing with 50 States. With that amount of rates it is awfully hard to keep from throwing the blanket over too much territory.

Senator PEARSON. In those territories where they don't tax at the State level you have a problem, with 105 counties.

Mr. OGDEN. We have a big problem. I have to go back to the primary purpose of it. And the purpose, of course, as I said, is not to create discrimination but to eliminate it. And that is the whole purpose of the bill. I wouldn't think—I would hate to see anybody contend for a different interpretation to be placed on it.

The CHAIRMAN. Assume this to be the fact: In State *x* properties are classified, both tangible and intangible personal property, with a given formula of taxation and assessment. Real estate is classified under a given formula of taxation and rate tax. Those are the only two classifications in this assumption.

Mr. OGDEN. Yes, sir.

The CHAIRMAN. Would such a State under this bill have a right to classify utility property under a different formula of assessment and taxation than were included in the examples which I just gave you, of classifications existing?

Mr. OGDEN. In other words, a third classification?

The CHAIRMAN. That is utility classification.

Mr. OGDEN. Senator, if the Constitution permitted classification, I would be inclined to think that such a third classification could be created.

The CHAIRMAN. Would the assessment formula be allowed to be higher than that in the other two classifications?

Mr. OGDEN. That is my understanding of what would be possible. Whether the State would actually do it or not is something else. But it would be legally possible. That would be my understanding of it.

The CHAIRMAN. Doesn't your bill provide that a formula of assessment would have to be identical with respect to properties of a similar character?

Mr. OGDEN. No, sir. Of course, value is a standard or measure that would apply commonly for everything. You value one kind of property by a different approach than another. I think the term we use is the best possible or most appropriate means of going at a particular property.

The CHAIRMAN. Do I understand you correctly to say, then, that classification would still be permitted, and that a class of utility property could be established under this bill?

Mr. OGDEN. Under this bill no classification could be established that will work a measure of discrimination. This bill is particularly designed to strike down any type of classification that will wind up with the railroads, say, with the assessment of railroads at a higher proportion of their value than other property.

The CHAIRMAN. That is clear.

Any further questions?

Senator PEARSON. Thank you very much. I have none, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. OGDEN. Thank you very much.

(Oral testimony follows Mr. Ogden's prepared statement, on p. 54.)
(Prepared statement follows:)

PREPARED STATEMENT OF JAMES N. OGDEN, VICE PRESIDENT AND GENERAL COUNSEL
OF THE GULF, MOBILE, & OHIO RAILROAD CO. ON BEHALF OF THE ASSOCIATION OF
AMERICAN RAILROADS

Mr. Chairman and gentlemen, my name is James N. Ogden. I am Vice President and General Counsel of the Gulf, Mobile and Ohio Railroad Company, with headquarters in Mobile, Alabama. I am representing the Association of American Railroads, whose members operate 95% of all the railroad mileage in the United States, employ 92% of all railroad workers and haul more than 99% of this country's railroad line-haul freight and passenger traffic.

I wish to state the views of the railroad industry with respect to S. 927 now before you for consideration.

The railroad industry endorses and supports this bill and I am honored to be able to express the warm appreciation of our entire industry to each Senatorial author for his help and encouragement in the struggle to defend and preserve our common carrier system of transportation.

The principal purposes of the bill are to declare that a portion of certain taxes on common carrier transportation property¹ shall be unlawful as constituting an unreasonable and unjust discrimination against and an undue burden on interstate commerce, and to provide a remedy in the Federal courts for such carriers against their collection. This unlawful proportion exists only when, and to the extent that, common carrier property is assessed at a greater proportion of its true market value¹ than the proportion at which all other property in the taxing district subject to the same levy is assessed, or taxed at a higher rate than the rates applicable to other property.²

The bill will benefit all common carriers of persons and property subject to the Interstate Commerce Act,³ but I will confine my remarks mainly to the railroad industry because I am appearing in behalf of that industry and because I believe it suffers most from the burdens which this bill seeks to remove.

Railroads require a great deal of property in order to do business. Right-of-way and rails; locomotives, cars and other equipment that operate on those rails; stations, buildings, shops, and so forth, all are needed to conduct railroad operations. At the close of 1966 the railroads in the United States had a total investment before depreciation of over \$36.5 billion extending over and along 211,500 miles of line. This enormous property investment qualifies railroads as prime targets for the tax assessor. Their property is easily identified and located. Cities and other political subdivisions invariably attempt to include within their boundaries as much railroad property as possible and thus insure a steady income from property taxes.

For the seven years 1960-1966 the total tax payments by all Class I railroads

¹ The term "transportation property" and the term "true market value" as used here have well defined meanings. See Appendix A hereto.

² It is intended that only the tax resulting from the excessive portion of the assessment or rate shall be unlawful and thus subject to question.

³ Railroads (sec. 1(a)); oil pipelines (sec. 1(b)); motor bus and truck operators (sec. 202(a)); water carriers of persons or property (sec. 302(d)); and freight forwarders (sec. 402(5)).

in the United States for all state and local purposes ranged from \$396 million in 1960 to \$340 million in 1966. The fact that over 80% of those payments went to satisfy ad valorem tax liens clearly identifies ad valorem taxes as the most important and the most burdensome of all railroad state and local taxes.

The vulnerability of our industry and the desire of state and local governments for revenue have combined to create a great many tax problems. Public demand for services from state and local governing bodies have increased more rapidly in the last 10 years than have the means of financing these services.⁴ For the future, we anticipate increasing pressures in this area in the form of heavier state and local taxation of transportation property as a convenient and politically expedient solution.

Property taxes are the result of tax assessments multiplied by rates. Discrimination in the matter of rates occurs when the rate applied against one property is higher than the rate for the same purpose applied against another property. For example, if the rate for police and fire protection in the City of X is \$1.00 per \$1,000 of assessment of railroad property and \$.50 per \$1,000 of assessment of all other property, then railroads are the victims of tax discrimination in the City of X equal to one-half their tax rate for police and fire protection.

There is evidence that states will resort to rate discrimination when the more traditional means are denied them. For example, in 1965 a Kentucky court held that all assessments should be at 100% of value. Implementing legislation rolled back rates for 1966 to match the sharply increased values. When it was realized that such action would have the effect of relieving railroads and utilities of the excessive and discriminatory taxes they had been paying in Kentucky because their property had been assessed at a substantially higher proportion of value than the proportion of value at which other property had been assessed, the Governor of the state formally intervened in behalf of a bill⁵ which raised the rates on railroad and utility property above the rates on other property. The result was that railroads and utilities are still paying discriminatorily higher taxes on their property in Kentucky. Higher rates for railroads and utilities have been substituted for higher assessments in Kentucky.

The ability to manipulate rates to the prejudice of transportation property so graphically illustrated by Kentucky can be readily employed in states where discriminatory property tax practices are permitted unless carriers have an adequate remedy such as the one here being proposed.

In the area of assessments, the critical step is to determine how much of the valuation that has been found should be assessed, which, in turn, depends upon how much of the valuation of other property is assessed. In other words, the problem is how to persuade tax assessors to equalize the railroads' assessment with that of other property in the same taxing district.

True equalization requires that each parcel of property be assessed at a figure which is the same proportion of its full value as the assessment of every other parcel of property in the same taxing district is of its full value.⁶

Railroad assessments are not equalized fairly and reasonably in numerous instances. Many tax assessors simply cannot or will not equalize railroad assessments with the assessments of other property even though both kinds of property are subject to the same tax levy. This is a well-known and widely publicized fact.

As early as 1944, the existence of discrimination due to lack of equalization as one of the problems of the railroads was recognized in government. In House Document No. 160, dated September 19, 1944, in "Letter from Board of Investigation and Research Transmitting a Report on Carrier Taxation", on pages 124, 125 it was said:

"The officials of approximately half the state readily concede that railroads are being overtaxed because of inadequate equalization. * * * If we accept the standards of equity set forth in present tax laws, this failure to equalize state and local assessments is probably the most significant of the railroad tax grievances."

In a report on National Transportation Policy by this honorable committee in 1961⁷ it was shown that railroads paid ad valorem taxes in 1957 in 31 states by

⁴ See *Handbook of State and Local Government Finance*, Tax Foundation, Inc., New York (1966).

⁵ H. B. 320, Kentucky Legislature, 1966 Session, and see news clipping attached hereto as a part of Appendix E.

⁶ See Appendix B for a more detailed explanation of equalization and how it may be determined.

⁷ *National Transportation Policy*, Report of the Committee on Commerce, United States Senate, 87th Congress, 1st Session, by its Special Study Group on Transportation Policies in the United States, Report No. 445 (1961), sometimes referred to as the Doyle Report.

an amount that was excessive, when compared with the taxes on locally assessed property, to the extent of \$141 million, or approximately 54% of the total railroad ad valorem tax bill in those states. During the 87th Congress, a bill similar to the bill now under consideration was introduced but could not be reached for action.

In describing the 1957 study, the Doyle Report was careful to state that the information had been furnished by the Association of American Railroads, and it added the following significant statement beneath the detailed information for each of the states referred to:

The resources available to this committee were not such as to be able to conduct an independent survey to affirm or disprove the specific data presented to us. However, research has been sufficiently extensive to establish that relative discrimination, of considerable magnitude, does, in fact, exist against the railroads in the assessment procedures of State and local governments for ad valorem taxation purposes. Therefore, the data is accepted as confirming the judgment of this study group that State and local assessment procedures do discriminate against the railroads. (emphasis added)⁸

Similar studies followed for 1961, 1962 and 1964, and each was widely publicized. The 1961 study provided the basis for an extensive article in the magazine, *Railway Age* of December 9, 1963.

The two later studies were presented to the Congress in hearings before Committees of the House in 1964 and 1966.⁹ Each study showed discrimination against railroads in the assessment practices of 20 or more states and amounting to more than 50% of the railroad property taxes involved.

A fifth study embracing the year 1965 is reproduced as Appendix C. It shows excessive ad valorem taxes paid in 21 states amounting to \$72 million or 44.0% of the total ad valorem tax bill in those states.

I wish to emphasize here that the purpose of these studies is neither to single out nor criticize any state. Nor is it our purpose to commend by omission states not listed or to suggest the absence of tax discrimination in any state not listed. Rather our purpose was and is to show a pattern or practice of discriminatory action, sufficient in scope and extent to warrant the attention of the Congress, and directed toward a subject (interstate commerce) over which Congress has full control and responsibility.

As for figures contained in these studies, we have used only the most conservative at our command. The actual extent of discrimination may be much greater. Regardless of degree, the result is active discrimination directed at railroads and as such should be declared unlawful. It is an unpardonable practice for which there can be no valid excuse.

It seems almost self-evident that excessive property taxes resulting from discriminatory equalization or the application of unequal rates would unduly burden interstate commerce. Railroads are responsible for moving the largest share of our intercity tonnage carried by any one mode of transportation (42.7% in 1966). Any substantial addition to the railroads' cost of doing business obviously burdens interstate commerce, and where such added cost is a direct result of discriminatory action aimed at the railroad industry, then the burden is clearly an undue burden and interstate commerce should be protected against it.

The added tax burden on account of discriminatory practices is substantial to the point of being oppressive. During the seven years that this legislation has been before the Congress, railroads have been overtaxed more than an estimated \$800 million as a direct result of discriminatory assessments alone.

While Appendix C lists only 21 of the 48 states, the tax discrimination which they are shown to practice actually has a much broader reach on the railroad industry. To illustrate, in 1966 the average road-mileage operated in transportation service of all Class I line-haul railroads in the 48 states was 212,783 miles, and those same carriers employed 630,895 persons and generated 738,257,399.000 revenue ton miles. The total mileage operated by all of the Class I line-haul railroads having property in any one of more of the 21 states listed in Appendix C was 195,939 (92.1% of the total). The number of employees of those same

⁸ *National Transportation Policy*, supra, at p. 487.

⁹ *Tax Assessments on Common Carrier Property*, Hearing before the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, House of Representatives, 88th Congress, 2nd Session, July 28, 1964, p. 22.

Tax Assessments on Common Carrier Property, Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 89th Congress, 2nd Session, on H.R. 4972, March 1 and 2, 1966, Ser. No. 89-30, p. 24.

carriers was 557,180 (88.3% of the total); and the revenue ton miles generated by those same carriers everywhere was 675,692,713,000 (91.5% of the total).

It is clear that legislation forbidding discriminatory taxation of carrier property should be made a part of the Interstate Commerce Act.

The undue burden on interstate commerce flowing from discriminatory tax practices is comparable to the undue burden on interstate commerce resulting from discriminatory action of state authorities in their failure or refusal to act reasonably in the matter of rail rates and services.

S. 927 follows the language of section 13(4) of the Interstate Commerce Act in declaring that the proscribed action by any state or subdivision or agency (in taxing common carrier property on a basis higher than that at which other property in the same taxing district is taxed) "is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful."

The fact that section 13(4) deals with one type of discrimination or burden and S. 927 with another is immaterial, because they are both concerned with "unreasonable and unjust discrimination against and an undue burden upon interstate commerce." In the former, the prohibition is against a state's requiring a carrier to charge intrastate rates so low as to be unfair to or discriminate against, or to place an undue burden upon, interstate commerce—that is, so low as not to contribute their fair share to the revenues required by the carrier properly to perform its interstate operations. In S. 927, the prohibition (simply stated) is against the action of a state or its subdivision in assessing and collecting taxes on carrier property at a higher rate or ratio than on other property in the same taxing district. In each case the act forbidden is unjust discrimination against interstate commerce, that is, against common carriers which are engaged in interstate operations and are subject to the Interstate Commerce Act. In each case the prohibition is against a type of discrimination or burden which would deprive a carrier of revenues needed in the performance of its services in interstate commerce.

The provisions and purposes of section 13a of the Interstate Commerce Act relating to rail services are to the same effect—discriminatory state action which unduly burdens interstate commerce will not be permitted.

It is clear that Congress can constitutionally enact a measure such as this.

Two recognized authorities in the fields of constitutional law and state taxation, Paul J. Hartman and Paul H. Sanders, both of Vanderbilt University School of Law, have supplied an exhaustive opinion on this question as related to similar legislation pending in the 89th Congress (H.R. 4972).¹⁰ These gentlemen have reviewed S. 927 and Mr. Sanders is present and will testify in support of its constitutionality.

Mr. Hartman is a Professor of Law specializing in state and local taxation law. He is the author of *State Taxation of Interstate Commerce*¹¹ and has written numerous law review articles on the subject.

Mr. Sanders is also a Professor of Law teaching courses in constitutional law and labor law. He is the author of various articles and publications in the constitutional and public law fields.

Comprehensive biographical data on both these gentlemen may be found at the end of their printed memorandum.

We have also sought and obtained the views of four noted and qualified authorities in the fields of taxation, economics, and transportation as to the appropriateness, adequacy, desirability, and need for this legislation.

These experts are General John P. Doyle of Texas, Dr. Harold M. Groves of Wisconsin, Mr. Broley E. Travis of California, and Dr. Rolf A. Weil of Illinois.

Each man was supplied with copies of S. 927, the Report of the Committee Hearings,¹² and the Hartman-Sanders Opinion relating to the constitutionality of the measure.

General Doyle, who prior to his retirement served as Director of Transportation of the United States Air Force, occupies the McDonald Chair of Transportation at Texas A & M and served as Director of a Special Study Group on Transportation Policies in the United States for the Inter-Study Group on Transportation Policies in the United States for the Interstate and Foreign Commerce Committee of the Senate, which reported on the subject in January of 1961. Full biographical information appears immediately after his letters of February 7, 1966, and July 14, 1967, which are attached hereto as Exhibit 1.

¹⁰ Copies have been supplied the Subcommittee and Staff.

¹¹ Hartman, *State Taxation of Interstate Commerce*, Dennis & Co., Inc. (1953).

¹² *Tax Assessments on Common Carrier Property*, supra.

Dr. Groves brings to bear on the issue a comprehensive knowledge of economics and public finance. He is a Professor of Economics at the University of Wisconsin, has served Government in both appointive and elective capacities, has written extensively of finance and taxation, and served a term as President of the National Tax Association. Extended biographical data appears immediately following his statement which is attached as Exhibit 2.

Mr. Travis is a consulting valuation engineer in Sacramento, California. He is a former Chief Valuation Engineer for the California State Board of Equalization. He has assisted the States of Oregon, Colorado, New York, Utah, and Idaho in their railroad assessment work. He has been employed as an expert by railroads in the preparation of valuation and equalization cases in Missouri, Illinois, South Dakota, Iowa, and Ohio since his retirement from his position with the State of California in 1962. More detailed biographical data appears as a part of Mr. Travis' statement.

Dr. Weil is President of Roosevelt University, a former research analyst for the Illinois Department of Revenue, author of articles on property tax and equalization, and a specialist in public finance and economics.

Though unable to have General Doyle or Dr. Groves here in person, we are fortunate in being able to present Mr. Travis and Dr. Weil both of whom will appear later.

For the most part state relief statutes are vague and confusing and have little to commend them in the way of uniformity of either construction or application. With few exceptions they are designed to exhaust the litigant in a web of procedural confusion and thus effect his ultimate defeat.

Attached as Appendix D is a memorandum dealing with relatively recent railroad state tax litigation and to which is attached a list of state cases. For the most part the decisions listed were adverse to the railroad or the ultimate result did not afford material relief or the litigation is still pending. A few cases which did not involve railroads have been included because of their immediate or potential effect on railroad assessments. The material is not offered as being all inclusive. However, it points up an alarming trend to legalize the discriminatory taxation of railroads. Alabama, Montana, Kansas, Kentucky, and Tennessee furnish striking examples of what has been done or threatened in this area.

Railroads frequently find themselves in a perilous position as the result of state discriminatory property taxes. This is illustrated in clippings from Alabama, Kentucky, Louisiana and Tennessee newspapers attached and identified as Appendix E.

It seems clear that the proposed measure, offering as it does, a clear, direct and simple remedy designated for uniform application by the Federal courts is highly desirable. Employee support for S. 927 is indicated in a strong editorial on the subject appearing in the June 1967 issue of *Railway Employees Journal*, a copy being attached as Appendix F.

It should be kept in mind at all times that the measure here under consideration addresses itself only to supplying a procedure by which discriminatory taxes may be corrected. It is only available to the taxpayer capable of bringing himself within its terms. It is not self-operative and neither imposes any duty nor confers any right on the Federal government to administer state taxes. The offensive taxes must be proven to be such by competent evidence and in a court of law. Absent such a proceeding and proof by a complaining taxpayer, the bill here proposed would have no effect whatever on any act of any state regarding any tax at any time.

To avoid unduly lengthening this statement and at the same time make available full information concerning this measure and certain questions that might be asked regarding it, I suggest that the committee by reference include as a part of the record of this hearing the documents listed below:

- (1) The Doyle Report, *National Transportation Policy*, supra.
- (2) U.S. Bureau of the Census, U.S. Census of Governments: 1957, Vol. V., *Taxable Property Values in the United States*.
- (3) U.S. Bureau of the Census, U.S. Census of Governments: 1962, Vol. II, *Taxable Property Values*.
- (4) Report of the Advisory Commission on Intergovernmental Relations on "The Role of the States in Strengthening the Property Tax", Vols. 1 and 2, June 1963.

I thank the Chairman and the members of the committee for this opportunity to appear before you. If there are any questions which you desire to ask, I shall be happy to try to answer them. If there is any additional information

on this subject which you wish us to furnish now or later, we will do our very best to oblige you.

In closing, we submit that the duty of the Congress to protect interstate commerce from the undue burden of discriminatory taxes and, by so acting, to preserve our transportation systems in furtherance of the national transportation policy, is clear and compelling.

(Following are the appendixes and material referred to:)

APPENDIX A—"TRANSPORTATION PROPERTY"

The term "transportation property" is well defined and has a definite, limited meaning in regulations of the Interstate Commerce Commission. There is appended hereto a brief outline of relevant provisions of the Commission's *Uniform System of Accounts* for common carriers of several of the types subject to regulation.

As may be noted, the provisions governing the keeping of accounts by common carriers of different types contain for each a requirement for an account showing the cost of property used in transportation service as distinguished from another account showing the carrier's investment in property not used in its transportation operations. As to railroads, water carriers and freight forwarders, the property used in transportation service is referred to by the Commission simply as "transportation property." The express company regulations refer to it as "property devoted to operations" of the company; as to pipeline companies, the expression is property "owned by the carrier and devoted to pipeline operations"; and as to motor carriers, the term is "carrier operating property."

In the light of these regulations prescribed by the Interstate Commerce Commission, the term "transportation property" appears definitely to refer to property used in or devoted to a carrier's transportation service or operations; and is so limited in its scope and meaning as to exclude property not used in transportation, such as hotels, resort areas, oil wells and timber lands.

The legislation applies only to the assessment of "transportation property," not to property of all kinds and descriptions, owned or used by a carrier. So limited, the measure would insure that the property covered would be confined to that property clearly within the reach of the interstate commerce which is to be protected and would eliminate property not directly associated with the carrier's transportation business.

In the Commission's *Uniform System of Accounts for Railroad Companies*, 49 CFR Part 10, the instructions for keeping "Property Accounts" begin with the following explanatory statement (49 CFR p. 81):

"The several primary accounts included in this general account are designed to show the cost of land and road property owned by the carrier and devoted to transportation service."

The requirements for "General Balance Sheet Accounts" are set forth commencing with section 701 and contain the following (49 CFR 731, 732, 737):

731 Road and Equipment Property

This account shall include the accounting company's investment in road and equipment (including that held under contract for purchase), used or held for use as *transportation property* in existence at the date of the balance sheet. When property is retired from service this account shall be credited with the ledger value of the property retired. (Emphasis added.)

732 Improvements on Leased Property

(a) This account shall include the cost of improvements made by the lessee to property which is held under lease from others or through control of the company owning the property, where such improvements are used by the lessee in *transportation service*, and the lessee is not to be reimbursed by the lessor for such improvements. (Emphasis added.)

* * * * *

737 Miscellaneous Physical Property

This account shall include the accounting company's investment in physical property other than property assignable to accounts 731 and 732, including hotels, restaurants, powerplants, etc., which are not operated by the accounting company or another carrier in connection with its transportation service.

Items of Investment

Coal and other mines.
 Commercial power plants.
 Hotels and restaurants.
 Lands and buildings not used in transportation operations.
 Lands and other property acquired and held in anticipation of future use.
 Mineral and timber lands.
 Rails and other track material leased to others.
 Saw mills and other manufacturing plants not operated in connection with transportation service.

Language of similar import, although not identical, may be found in the *Uniform System of Accounts* prescribed by the Commission for other common carriers subject to the Interstate Commerce Act.

In the regulation prescribing the form of general balance sheet statements for express companies, the opening section reads as follows (49 CFR 18.501) :

§ 18.501 Real property and equipment

This account shall include the balances carried showing the cost or ledger value of the investment in real property and equipment devoted to the operations of the accounting company.

In contrast, another section, 49 CFR 18.503, relates to an account for "Miscellaneous physical property" of express companies, which includes buildings held for rent, coal and other mines, and lands and buildings not used in transportation operations.

In the *Uniform System of Accounts for Pipeline Companies*, 49 CFR 20, instructions for balance sheet accounts include the following :

2-3 Tangible Property

The cost of property owned that is devoted to transportation service shall be recorded in account 30, Carrier Property, and in account 33, Operating Oil Supply. This includes carrier's investment in jointly-owned transportation property in which it has an undivided ownership interest. The cost of other property not directly associated with pipeline operations shall be included in account 34, Non-carrier Property. Property used in both carrier and noncarrier services shall be classified in account 30 or account 34 according to its dominant use.

The *Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property*, 49 CFR Part 182, contains the following requirement (49 CFR 182.1200) :

§ 182.1200 Carrier operating property

(a) This account shall include the total of the amounts representing the cost (see § 182.01-19) of carrier operating property included in accounts 1201 to 1290, inclusive, owned and used by the carrier in its motor carrier operations, including such property owned by the carrier but held by agents.

* * * * *

Also the following (49 CFR 182.1400) :

§ 182.1400 Noncarrier property

This account shall include the book cost of land, structures and equipment owned by the carrier but used in operations other than motor carrier operations. * * *

The *Uniform System of Accounts for Carriers by Inland and Coastal Waterways* appears as Part 324 of 49 CFR and contains the following specification (49 CFR Part 324, § 140) :

140 Transportation property

This account shall include the cost to the carrier of construction or acquisition, including additions and improvements, of all physical property used by the carriers or others in transportation operations, as detailed in the primary property accounts number 141 to 149, both inclusive.

The *Uniform System of Accounts for Freight Forwarders*, 49 CFR Part 440, contains the following section (49 CFR 440.140) :

§ 440.140 Transportation property

(a) This account shall include the cost to the company of construction or acquisition of all property used or held for use in transportation operations; also the cost of improvements made to leased property.

* * * * *

Also the following provision (49 CFR 440.160) :

§ 1404.160 *Nontransportation property*

(a) This account shall include the cost to the company of land, structures, and equipment not used in connection with transportation operations.

(b) This account shall include also the appraised value of land and improvements retired from transportation service and retained by the company.

"TRUE MARKET VALUE"

"True market value" is the goal generally sought by all tax assessors either as the assessment figure or as a starting point from which final assessments of less than "true market value" may be computed. In an authoritative treatise published by the National Association of Tax Administrators, the following statement appears:

"The statutes of the several States prescribing the value standard for tax purposes use such terms as 'fair market value,' 'fair cash value,' 'full market value,' and the like. All of these terms are synonymous: they mean nothing more and nothing less than what we mean in this report by the term 'market value' or the word 'value' without a qualifying adjective."¹

These have been judicially defined in numerous cases. For instance, I call your attention to *New York Bay R. Co. v. Kelly*, 22 N.J. Misc. 204, 37 A. 2d 624, 628 (1944); *Fort Worth & D.N. Ry. Co. v. Sugg* (Tex. Civ. App.), 68 S.W. 2d 570, 572 (1934); and *Guyandotte Valley R. Co. v. Buskirk*, 57 W. Va. 417, 50 S.E. 521, 526 (1905).

Of course, the proportion of "true market value" at which assessments are finally fixed varies among the several States. In some States the law requires assessment at "true market value," in others at 60 percent thereof, in others at 35 percent, et cetera.

Railroad property in most of the States is valued and assessed as a unit; that is, the whole system as it exists in 8, 10, or 15 States is valued; this value is distributed among the several States on the basis of recognized allocation factors; and then, in turn, the value in a particular State is apportioned among the several taxing districts in that State on the basis of mileage. In other words, when railroads are assessed as a unit the total value is first determined and then apportioned; the total assessment is not determined by adding the assessed value of individual items that make up the railroad plant.

As to the few States in which railroad property is locally assessed, I have no specific information concerning the assessment methods but I suppose it would be natural for the assessors to compare adjoining properties.

Let me emphasize that S. 927 does not suggest or require a State to change its assessment standards, assessment practices, or the assessments themselves. It merely provides a single standard against which all affected assessments must be measured in order to determine their relationship to each other. It is not a standard for determining value; it is a standard to which values that have already been determined must be compared. This standard is "true market value" (also the generally accepted standard for assessment purposes) and the requirement is that carrier property be assessed at the same proportion of such value as the proportion at which all other property subject to the same tax rates is assessed.

APPENDIX B—"EQUALIZATION"

The purpose of the bill is to provide relief for common carriers from discriminatory property taxes whether through assessments or through rates. The test of discrimination as applied to assessments is to show the taxes which are based upon an assessment of the carrier's property at a higher proportion of its true market value than the proportion at which other taxpayers are assessed upon their property in the same taxing district. In making this comparison, the bill contemplates the relationship between a common carrier's property and that of the "average" taxpayer in the taxing district. However, the word "average" has a precise arithmetical connotation which makes it unsuitable in this context.

For simplicity, therefore, the phrase "all other property in the taxing district" has been used as the equivalent of the property of the "average" taxpayer there. Thus the words "all other property" are to be construed as meaning

¹ National Association of Tax Administrators Committee on Unit Valuation, "Appraisal of Railroad and Other Public Utility Property for Ad Valorem Tax Purposes," p. 13 (1954).

property in the aggregate, and not individually as separate parcels or kinds of property. The reason is obvious since, if the latter were the case, the carrier would be entitled to look for the particular parcel of property in the taxing district which was assessed lowest of all (that is, at a lower percentage of its true market value than the percentage applicable to any other parcel in the entire district) and demand similar treatment. This is not the purpose of the legislation, for such an interpretation would merely remove discrimination against common carriers and substitute discrimination in their favor.

Likewise, it is possible that in a particular taxing district there might be a parcel of property owned by another taxpayer which is assessed at a higher proportion of its true market value than that applied to the carrier's property. In such a case, if it were necessary to consider each individual parcel of property in applying the bill's standards, it would mean that the carrier would be entitled to no relief, merely because there was one other taxpayer who suffered an even greater discrimination.

Therefore, in order to make possible the fairest comparison—that of the carrier with the hypothetical “average” taxpayer—the unit to be used is that of all parcels of property in the district, considered in the aggregate.

Proof of the composite level of assessment of this property would customarily be submitted by means of the results of a so-called “sales/assessment ratio test.” In such a test, various data—the assessed value, sales price, type of property and other relevant factors—are recorded from a random selection of parcels of real estate which have been sold in arm's-length sales between willing buyers and willing sellers. From eligible transactions comprising the sample various ratios are computed, with consideration being given to both urban and rural property, and a weighted average is determined and expressed in terms of an assessment ratio, or, in other words, the percentage of true market value at which the property in the sample is assessed. This result can be statistically demonstrated to be accurately representative of the level of assessment of “all other property” in the geographical area (i.e., taxing district) represented by the sample.

It follows, therefore, that a carrier may obtain the relief provided for in the bill by demonstrating that its property is assessed at a higher proportion of its true market value than the proportion at which all other property in the taxing district, *in the aggregate*, is assessed.

APPENDIX C

State	1965 railroad ad valorem taxes	All other 1965 State and local railroad taxes	Percent of value at which railroad property assessed in 1965	Percent of value at which property of others assessed	Estimated reduc- tion in railroad ad valorem taxes if railroad assessments had been made at the same percent of value as were the assessment of property of others	Percent of tax excessive
Alabama.....	\$2,812,033	\$2,443,560	33	17	\$1,349,776	48
Arizona.....	8,759,478	296,939	71	20	6,306,824	72
California.....	28,560,100	7,810,000	40	22	12,852,045	45
Idaho.....	4,222,309	311,691	30	12	2,533,385	60
Iowa.....	7,076,254	99,746	60	24	4,245,752	60
Kansas.....	13,218,007	651,885	30	20	4,361,942	33
Kentucky.....	4,357,800	484,200	35	30	610,092	14
Louisiana.....	4,269,000	1,661,000	40	20	2,134,500	50
Mississippi.....	3,191,000	691,000	30	14	1,691,230	53
Missouri.....	10,432,400	991,600	50	30	4,172,960	40
Montana.....	6,267,873	271,127	50	25	3,133,937	50
Nebraska.....	5,769,504	-----	35	28	1,153,921	20
New Mexico.....	2,854,109	408,853	69	29	1,655,383	58
North Dakota.....	4,691,099	283,901	45	25	2,064,084	44
Ohio.....	25,141,523	3,087,011	100	55	11,313,685	45
Oklahoma.....	6,106,570	368,430	35	18	2,992,219	49
South Dakota.....	1,084,420	31,580	60	47	238,572	22
Tennessee.....	7,576,130	2,243,870	95	30	5,151,768	68
Utah.....	4,394,903	986,097	28	17	1,714,012	39
Virginia.....	8,663,429	5,643,571	40	33	1,559,417	18
Wyoming.....	3,279,656	43,523	25	20	655,931	20
Total.....	162,727,697	28,809,584	-----	-----	71,891,435	44

APPENDIX D—AD VALOREM TAX DISCRIMINATION

MEMORANDUM IN RE POST-LITIGATION DISCRIMINATION AGAINST RAILROADS

Even when railroads are successful in presenting to a court a position of uniformity for the equalization of railroad properties, the litigation is not always the last word but is often followed by action from the executive or the legislative branch having as its purpose the cancellation of the effect of the court decision. Thus, the efforts to discriminate persist even after successful litigation.

As an example, in 1958 cases were filed in the State of Kansas protesting discrimination which had continued over a period of 20 years despite the fact that the Kansas State Tax Commission, through its own assessment-ratio studies, was well aware of the fact that the discrimination existed and knew of its degree. Before the cases could be tried on their merits, legislative threats of classification caused the railroads to dismiss their cases.

Perhaps the two most flagrant recent actions taken to nullify the effect of court decisions are represented in the states of Kentucky and Tennessee.

In 1965, the Kentucky Court of Appeals (the court of last resort in that state)¹ declared that all property must be uniformly assessed at its fair market value, beginning January 1, 1966, as provided by the Kentucky Constitution. Shortly after the court decision was handed down, the Governor called the General Assembly into special session and on his recommendation, the necessary legislation was promptly enacted to implement the court decision. This was done primarily by rolling back the state tax rates as though property generally had been assessed at 30% (the correct figure was about 27%). The legislation further provided that tax rates generally under the court decision should produce the same revenue as had been produced during 1965, subject to one or two exceptions, under which increases could be permitted for schools, etc., because of bona fide need for more money. On the last day of the next regular session of the Kentucky General Assembly, there was enacted a bill² for 1966 and 1967 that requires the use of local ad valorem tax rates against the property of railroad and other public service companies higher than the rates to be applied to property generally, the stated purpose being that the revenue received from such companies during the 1965 tax year should not be reduced during 1966 and 1967. Thus, while the effective tax rate applicable to the properties of those companies would have decreased by reason of the litigation (because the discriminatory levels of equalization applied to those companies had resulted in an effective rate higher than that applicable to other properties) the Legislature, at the instance of the Governor, avoided completely that result, and, in doing so, ignored the clear constitutional demand of uniformity.

In the United States District Court for the Middle District of Tennessee, a decision was obtained in 1966 to the effect that a railroad is entitled, under the Tennessee Constitution, to have its property equalized at the same level of equalization as is applied to property generally in the State of Tennessee.³ This decision is on appeal to the United States Court of Appeals for the Sixth Circuit. Within a few weeks following the rendition of that decision, a state court decided (and was upheld by the Supreme Court of Tennessee) that Tennessee law requires that all properties be assessed at actual cash value and that properties not so assessed must be increased in valuation to that point.⁴

Following these decisions, the Tennessee General Assembly was called into special session in March, 1966 to consider, among other things, an amendment to the Constitution of Tennessee which would allow the establishment of classifications of property for ad valorem taxation purposes and more particularly for the purpose of placing property of railroads and public service companies into a separate category simply because of their being railroads and public service companies.

The Tennessee General Assembly did not act upon the proposal and it was again the subject of discussion in the 1967 regular session of the legislature. However, all proposed constitutional amendments were carried over to the 1968 session and so the Tennessee General Assembly in 1967 devoted its attention, so far as nullifying the court decisions was concerned, to legislation unrelated to constitutional amendment.

¹ *Russman, et al. v. Luckett, et al.*, June 8, 1965.

² Ky. Acts 1966, Ch. 41, Sec. 1.

³ *Louisville & N.R.C. v. Pub. Service Comm., et al.*, 249 Fed. Supp. 894.

⁴ *Southern Ry Co. v. Clement, et al.*, affirmed by Tenn. Ct. of Appeals, Nov. 25, 1966; certiorari denied by Sup. Ct. of Tenn., May 15, 1967, 415 S.W. 2d, 146.

The device chosen by the Tennessee General Assembly was a so-called privilege tax⁵ which the Attorney General had advised would be unconstitutional, to be levied at the same time as property taxes and at the same rate as property taxes, and collected in the same manner as property taxes. The base of the tax is certified out at the same time, in the same manner and by the same body as is certified the ad valorem assessment. The tax is so computed that in each case it, plus what is admitted to be the property tax levied on railroads and other utility companies, will not be less than the highest ad valorem tax paid by the affected company in the period 1962-1966. The bill supposedly will expire by its terms January 1, 1973, but this was not the intention of the sponsor and the expiration provision was inserted only by amendment. Obviously, it can be removed by amendment.

This discrimination against railroads rests at least partially upon the fact that railroads cannot readily move their property as a countering action to discrimination.

For instance, several years ago a large national company threatened to move its headquarters out of the Tennessee city in which it was located, the threat being prompted for property tax reasons. Faced with the possible loss of jobs and tax revenue, the city entered into an agreement that the property of the company would be assessed at a fraction of its actual cash value.

The agreement had no basis of legality in the Constitution or statutes and yet, faced with a taxpayer that could move its property, the taxing authority promptly favored the taxpayer.

A second illustration appears in the following quotation from an editorial which appeared in one of Tennessee's larger newspapers on April 5, 1967. The tax referred to was a proposed state tax on aviation fuel. The quotation is:

"The tax could cause some airlines to avoid refueling in Tennessee. This would make a dent in the economy, and it could lead to transfer of substantial airline facilities to other states. The airlines have numerous employees in Tennessee engaged in the refueling and service processes alone.

* * * * *

"Commercial aviation is a substantial industry in Tennessee and any tax which would lessen its contribution to the economy would be self-defeating. The proposed bill is not in the public interest and should be killed."

These two illustrations, taken with the history of railroad taxation, show quite plainly that railroads, the bulk of whose property is fixed and, in all practical effect, immovable, are considered fit subjects for discrimination; that the discrimination is not inadvertent but is, instead, deliberate, intended and well-planned.

The railroads recognize that the professional administrators in some states are anxious to achieve uniformity. However, hard, unfortunate and costly examples prove that the states will discriminate when they can discriminate. A workable Federal remedy offers the best protection to this vulnerable taxpaying industry.

Following are collected, by states, a number of recent tax cases having a significance to the railroad industry.

ALABAMA

Refusal of the State Department of Revenue to equalize railroad assessments for the years 1964, 1965 and 1966 resulted in the filing of approximately 39 suits. These suits were concluded in April of 1967 with the entry of individual orders by Circuit Judge Eugene Carter of Montgomery County in each case, granting relief to the railroads over a period of time. The lead case was that of *L&N Railroad Co. v. State of Alabama*.

These judicial determinations prompted the introduction in the Senate of the State of Alabama a bill to amend the Constitution to authorize a classification system for real property under which railroad and other utility property is classified at a higher percentage of value than other property in the State.

ARIZONA

1. *Southern Pacific v. Cochise County*, 92 Ariz. 395, 377 P. 2d 770 (1963). Arizona Supreme Court held that the Southern Pacific had proved discrimination in the 1959 assessment of its property by officials of Arizona, that this dis-

⁵ 1967 Tenn. Public Acts, ch. 311.

crimination violated the Arizona Constitution and statutes, but refused to authorize recovery of taxes illegally imposed. Rather, the court held that the railroad would be entitled to injunctive relief in the future upon proof of discriminatory assessing practices and that only after first obtaining an injunction could the railroad recover illegal taxes already paid. Following this decision the legislature in 1964 amended the Arizona Code effectively nullifying the decision.

ARKANSAS

1. *St. Louis-San Francisco Ry. Co. v. Ark. Public Service Commission*, 304 S.W. 2d 297 (1957). Following the 1965 assessment of Frisco property in Arkansas by the Public Service Commission of that state, the railroad appealed to the Circuit Court where an order was entered denying relief to the Frisco. On appeal to the Supreme Court it was held that the judiciary does not sit as an assessing body and, in the absence of proof that the assessment of property for tax purposes is manifestly excessive, fraudulent or oppressive, courts will not disturb the findings of an assessing body.

2. *Kansas City Ry. Co. v. Ark. Commerce Commission*, 323 S.W. 2d 193 (1959). Case dealt with the proper 1957 evaluation of property of the Kansas City Southern Railway Company. No significant tax relief obtained by railroad and the court did not deal with the equalization problem.

3. *Kansas City Southern Ry. Co. v. Ark. Commerce Commission*, 326 S.W. 2d 805 (1959). Following the tax assessment of plaintiff railroad's property for the years 1955 and 1956 by the Tax Division of the Arkansas Public Service Commission, the railroad protested and appealed to the Circuit Court. The orders of the Public Service Commission were affirmed and the railroad appealed to the Supreme Court of Arkansas but its appeals were dismissed on motion by the defendant on the ground that the record of the cases below had not been filed with the Clerk of the Supreme Court within 60 days after entry of order in the Circuit Court, even though the court below had formally extended the time for filing the record in the Supreme Court.

CALIFORNIA

1. Forty-eight separate suits challenging the level of assessment of railroad property for the tax year 1958 were filed in 48 separate California Superior Courts by Southern Pacific Company and its rail affiliates against 48 counties and various cities in California, pointing up the cumbersome and inadequate appeal procedure prevailing in the state. The railroad voluntarily dismissed these suits without prejudice on July 1, 1959, on an agreement by the California State Board of Equalization to equalize railroad assessments at the rate of $2\frac{1}{2}\%$ per year. However, the California State Board of Equalization has not equalized the railroad assessments as agreed to, according only a fraction of the relief promised. Eight years later the railroad assessments in California remain substantially higher than others.

FLORIDA

1. *Seaboard Air Line R. Co. v. Gay*, 74 So. 2d 569 (1954), Circuit Court, Leon County, Florida (tax year 1953 relief denied).

2. *Green v. Florida E. Coast Ry.*, 141 So. 2d 326 (1962), pleadings held to state cause of action for tax year 1961; *Florida E. Coast Ry. v. Green*, 178 So. 2d 355 (1965), the Court of Appeals affirmed the court below in denying the railroad relief for the tax years 1961 and 1962, the latter having been brought in by amended complaint. We understand this case is now being appealed to the Supreme Court of Florida.

GEORGIA

1. After a court decision approved by the Supreme Court in 1965 requiring that all property in every county be assessed at the same percentage of value, the State's Revenue Commissioner directed all counties to levy taxes on a 40% assessment ratio. In 1966, the legislature passed a bill placing a one-year moratorium on the equalization order.

IDAHO

1. *Union Pacific R. Co. v. State Tax Commission*, No. 8950 (1960).

ILLINOIS

1. *People ex rel. Callahan v. GM&O R.R. Co.*, 8 Ill. 2d, 66.
2. *Chicago & North Western Ry. Co. v. Illinois Department of Revenue*, 6 Ill. 2d 278, 128 N.E. 2d 722, cert. den. 351 U.S. 950, 76 S. Ct. 844, 100 L.ed. 1474, reh. den. 352 U.S. 857, 77 S. Ct. 22, 1 L.ed. 2d 69 (1955). Relief denied.
3. *Chicago, Burlington & Quincy R. Co. v. The Ill. Dept. of Revenue*, 17 Ill. 2d 376, 161 N.E. 2d 838 (1959). Relief denied.
4. *People ex rel. v. Chicago, Burlington & Quincy R. Co. et al.*, 33 Ill. 2d 88, 210 N.E. 2d 196 (1965). The Supreme Court of Illinois held for the railroad in this case involving six years of claims by 12 railroads (46 individual law suits) dealing with the same general issues previously resolved in favor of the railroads by the Supreme Court of Illinois in earlier appeals. The decision is for the second time on appeal by the county to the United States Supreme Court.
5. *People ex rel. C&NW Ry. Co. v. Hulman*, 201 N.E. 2d 103 (1964). Relief denied.

INDIANA

1. *State Board of Tax Commissioners v. C.M.St.P.&P.R. Co.*, 96 N.E. 2d 279 (1951). Lower court granted railroad substantial relief, Appellate Court of Indiana reversed.

IOWA

1. *Chicago & North Western Ry. Co. v. Iowa State Tax Comm. et al.*, 137 N.W. 2d 246 (1965).
2. *Chicago and North Western Ry. Co. v. X. T. Prentis et al.*, and *Chicago and North Western Ry. Co. v. Lynn Potter et al.*, District Court, Polk County, Iowa (decided 10/19/1966). Held against the railroad on the factors to be considered in determining the assessment; that railroad's property should be equalized with all other property, but found that had not proved absence of equalization; and that there was discrimination between railroads in the assessment practices of the State.

KANSAS

1. *Kansas City Southern Ry. Co. v. Board of County Commissioners*, 183 Kan. 675, 331 P. 2d 899 (1958). This case held that the protest filed by the railroad in the lower court stated a cause of action and should not have been dismissed on demurrer. Justice Fatzer in his concurring opinion on page 905 makes the following observations of assessment practices over a period of 20 years in the State of Kansas:

In the instant case the protest alleged that for more than 20 years, as a result of the commission's own assessment ratio studies, it was advised that the average rate of assessment of property to its true or market value in Cherokee County, which was not assessed by the commission, was 21 percent. Thus, for a period of years the commission was advised by its own studies that the statutes of the state were being flagrantly disregarded by the local assessment officials in Cherokee County, but it failed to take corrective measures to require that the assessments be made at the true or market value of the property assessed; consequently, such failure, over such period of years, can justify no other conclusion than that of an adopted policy or practice of constructive fraud and discrimination against the plaintiffs and their property . . .

Before trial on merits, this case and other similar cases were dismissed under threat of classification by legislature.

2. *Union Pac. R. Co. v. Sloan*, 188 Kan. 231, 361 P. 2d 889 (1961). Held that absent authority right of appeal, fraudulent and oppressive official conduct can be judicially challenged only through appropriate extraordinary legal remedies, such as injunction, mandamus or quo warranto.

KENTUCKY

1. *Russman et al. v. Luckett, et al.*, 391 S.W. 2d 694, decided June 8, 1965 by the Kentucky Court of Appeals (State Court of Last Resort). By this decision all property must be assessed at its fair cash value, starting January 1, 1966, as provided by the Kentucky Constitution. The court warned all Assessing Officers would be held strictly accountable. It was understood this would produce equalization through the assessment of all property, including railroads, at the same level.

Shortly after this decision, the Governor called the General Assembly into special session commencing August 23, 1965, and the needed legislation to implement the court decision was promptly enacted.

Subsequently in the concluding minutes of the regular session of the Kentucky General Assembly (near midnight, March 18, 1966), there was enacted a bill for 1966 and 1967 that will require the use of ad valorem tax rates against railroad and other public service companies different from those to be applied to property generally, for the purpose of collecting from such public service companies the same or more revenue received from them during the 1965 tax year. Thus, the General Assembly has taken action to deprive the railroads and other public service companies in like position from enjoying the benefits of the equalization program during the next two years. There is no assurance that these same tactics may not be repeated indefinitely.

LOUISIANA

1. *K. C. S. and La. & Ark. R.R. Co. v. La. State Tax Commission* (filed recently at Baton Rouge). Action challenging determination of 1966 assessment.

MICHIGAN

1. *Chicago and North Western Ry. Co. v. Michigan Department of Revenue*, U.S. District Court, Southern Division, Western District (tax year 1965), pending on State's motion to dismiss for want of jurisdiction.

2. *Wyandotte Chem. Corp. v. City of Wyandotte*, (tax year 1960), 321 F. 2d 927 (1963), decision of Circuit Court of Appeals, 6th Circuit, reversing District Court decision in taxpayers favor on the ground that the taxpayer's remedy in state court was adequate.

MISSISSIPPI

1. There are no recent cases, which may possibly be accounted for by reason of the fact that a losing taxpayer in an assessment appeal must pay 10 percent of the contested taxes as a penalty (Code 1940 § 9853).

MISSOURI

1. *Norfolk & Western Ry. Co. v. Missouri State Tax Commission*, Circuit Court, Cole County, Missouri (tax year 1965). Relief denied December 1965, pending on appeal to U.S. Supreme Court.

2. *May Dept. Stores Co. v. State Tax Commission of Missouri*, (tax year 1955), 308 S.W. 2d 748 (1958). Relief denied.

MONTANA

1. *Yellowstone Pipe Line Company et al. v. State Board of Equalization*, 138 Mont. 603, 358 P. 2d 55 (1960). (Relief denied because state constitution permitted classification of property for assessment.) A dissenting opinion in this case found systematic, intentional discrimination by the board in its practice of assessing pipeline properties. Certiorari denied by U.S. Supreme Court.

NOTE.—While this case did not involve a railroad, the principle directly affects the amount of the taxes paid on railroad property.

NEW JERSEY

The following suits for declaratory judgments involve 1966 assessments:

1. *Lehigh Valley R. Co. v. Kingsley, State Division of Taxation et al.*

2. *Erie Lackawanna R. Co. v. Kingsley, State Division of Taxation et al.*

3. *New York Central R. Co. v. Kingsley, State Division of Taxation et al.*

4. *Pennsylvania R. Co. v. Kingsley, State Division of Taxation et al.*

Superior Court of New Jersey. This remedy is being tried because of long delays in obtaining decisions on appeals to State Division of Tax Appeals. There are still pending 167 railroad appeals covering years 1953 through 1965 which have not reached the trial calendar.

NOTE.—The above cases for the most part have been settled or withdrawn. This is the classic example of the protracted proceedings that often have to be endured to obtain relief.

5. *Del. Lackawanna & Western R. Co. v. Director, State Division of Taxation*, 23 N.J. 561 (1957). Court held that under state constitution railroads could not

be treated as a separate class for property tax purposes. The effectiveness of this decision was destroyed when the court went on to hold that equalization ratios could not be used for the purpose of demonstrating this discrimination.

6. *Lehigh Valley R. Co. et al. v. Director*, 26 N.J. 173, Cert. Den. Relief denied.

7. *Lehigh Valley R. Co. v. Director*, 26 N.J. 188 (1957). Relief denied.

8. *New York, Susquehanna & Western R.R. Co. v. Collector*, 44 N.J. 491. Held that railroad property may constitute a separate class for tax collection purposes.

NEW YORK

1. *New York Central R. Co. v. Assessors of the City of Buffalo*, in Supreme Court for Erie County, New York. Separate suits filed for each tax year 1955 through 1965. In 1964, cases for the years 1955 through 1959 were permitted to lapse, account impossibility of matching proof to burdensome prerequisites of City Assessors.

In January, 1965, cases for years 1960 through 1964 came to trial. On one item, parties agreed to reduce assessment by about 50%, prior to conclusion of trial. On another item, court reduced assessment by about 60% and Assessors have appealed. Case for year 1965 is still pending.

PENNSYLVANIA

1. *Central R. Co. of Pa. v. Commonwealth*, 403 Pa. 419, 370 U.S. 607 (1962). The Supreme Court held that the State of a railroad's domicile has the power to tax the entire fleet of railroad freight cars, unless the same part of that fleet has acquired a tax situs elsewhere and is subject to tax elsewhere.

SOUTH DAKOTA

1. *Chicago and North Western Ry. Co. v. Gillis et cet.*, 118 N.W. 2d 316 (1962). Relief denied regarding tax year 1962 in action for writ of mandate.

2. *Chicago and North Western Ry., Co. 1. Gillis, et cet.*, 129 N.W. 2d 316 (1964). Declaratory judgment action regarding 1962 tax year and relief was again denied.

3. *Chicago and North Western Ry. Co. v. Gillis*, 137 N.W. 2d 246 (1965). Court held that railroad was entitled to be assessed at no more than 60% of its actual value. This did not result in relief for the railroads and the courts approved the failure of assessor to grant this relief in.

4. *Chicago and North Western Ry. Co. v. Gillis*, (citation not available), decided by Circuit Court on September 2, 1965.

TENNESSEE

1. *Nashville, C. & St. L. Ry. v. Browning et al.*, (tax year 1938), 176 Tenn. 245 140 S.W. 2d 781 (1940), 310 U.S. 362 (1940). Relief denied.

2. *McCord et al. v. Southern Ry. Co.*, (tax year 1945), 187 Tenn. 247, 213 S.W. 2d 184 (1948). Relief denied.

3. *McCord v. Nashville, Chattanooga & St. Louis Ry.*, (tax year 1945), 187 Tenn. 277, 213 S.W. 2d 196 (1948). Relief denied.

4. *Browning et al. v. Alabama Great Southern Railroad Co.* (two cases) *McCord et al. v. Alabama Great Southern Railroad Co.*, (tax years 1945-7-9), 195 Tenn. 252, 259 S.W. 2d 154 (1953), 187 Tenn. 302, 213 S.W. 2d 207 (1948). Relief denied.

5. *A.G.S. R. Co. v. Railroad and Public Utility Commission of Tenn.*, U.S. District Court, Middle District of Tennessee (tax year 1949). Decision not reported (1950), relief denied.

6. *Biltmore Hotel Court v. City of Berry Hill*, (tax year 1963), 390 S.W. 2d 223 (1963). Relief denied.

7. *L&N R. Co. v. Public Service Commission of Tenn.*, U.S. District Court, Middle District of Tenn., (tax year 1965), pending on appeal to Sixth Circuit (1966).

8. *Southern Railway Co. v. Clement et al.*, Chancery Court, Davidson County, Tennessee (tax years 1964, 1965). Railroad's petition sustained but no relief resulted since decree was effective only for the future. 415 S.W. 2d 146.

9. *Southern Railway Co. v. Clement et al.*, Chancery Court, Davidson County, Tennessee (tax year 1965), still pending (1966).

The current round of tax litigation in Tennessee commenced with the *Browning* case decided by the Supreme Court of the United States in 1940.

That decision in effect held that railroads could be assessed at full value, even though other property was assessed at only a small fraction of full value. Through the years, railroads have employed various legal theories in attempts to obtain relief from discriminatory and burdensome assessments, but because of the decision in *Browning*, all efforts have failed.

After years of frustration, one railroad has finally persuaded the Federal District Court at Nashville to retain jurisdiction of an ad valorem tax case on the ground that there is no adequate remedy under State law. *L&N R. Co. v. Public Service Commission*, Docket No. 4310, M. D., Tennessee (1966). A decision favorable to the railroads has been appealed to the U.S. Circuit Court of Appeals for the Sixth Circuit.

In the case of *So. Ry. Co. v. Clement et al.*, petitions were filed requesting that all assessments in Loudon and Hawkins Counties be raised to actual cash value, or 100%. The Chancery Court of Davidson County sustained the petitions. The State appealed. The Court of Appeals affirmed the lower court's decision and the Supreme Court denied certiorari May 15, 1967. 415 S.W. 2d 146.

At the 1967 Session of the Tennessee Legislature there was enacted a law to assess all local property at no less than 15% of full value for 1968 with annual increases to 50% for 1973. In the meantime, the Senate has announced it will assess railroads at 50% starting this year.

VIRGINIA

1. *Richmond, Fredericksburg and Potomac R. Co. v. Commonwealth of Va.*, 203 Va. 294, 124 S.E. 2d 206 (1962). This case placed in issue the means of valuing railroad property and was decided against the railroad.

WEST VIRGINIA

1. *W. Maryland Ry. v. Board of Public Works*, 90 S.E. 2d 438 (1955). Railroad brought suit challenging formula used to assess railroad property and method of allocation employed. Both issues were decided against the railroad and on appeal the decision was affirmed.

WYOMING

1. *CB&Q R. Co. v. Bruch et al.*, (tax year 1962), 400 P. 2d 494 (1965). Relief denied.

2. *CB&Q R. Co. v. Bruch*, District Court, Laramie County (tax year 1963). Dismissed because of similarity to issues involved in 400 P. 2d 494.

3. *CB&Q R. Co. v. Bruch*, District Court, Laramie County (tax years 1964-1965). Two cases still pending relating to tax years referred to.

The above is offered as a partial list of pertinent cases based on information available only. Subsequent developments may have resulted in the determination or change in status of a case which is not reflected above.

The Mobile Press Register

MOBILE, PRICHARD, CHICKASAW, ALABAMA, SUNDAY MORNING, JULY 30, 1967

A SOUND SOLUTION TO PROPERTY TAXATION!!

PROPOSED LEGISLATION

Four Bills have been introduced in the Legislature by Senator Cooper, Et al proposing a fair and equitable system of property Tax Assessments.

SENATE BILL 444—Provides for a constitutional amendment which will allow classification and assessment of all taxable property as follows:

- Utilities 40%
- Residential (including rural and urban homes) 25%
- Personal Property 30%
- Commercial and Industrial 25%
- Farmland 15%

SENATE BILL 445—Provides for the allowance of exemptions from the Property Tax. They are:

- Personal property not used in a business or trade (including household contents).
- Growing Timber
- Farm tools and Implements

SENATE BILL 446—Increases the Homestead Exemption from \$2,000 to \$5,000

SENATE BILL 447—Enabling Legislation for Senate Bill 444 for the classification and assessment of Taxable Property.

**EXAMPLE: Classification
System
25%**

On a \$25,000 Home in Mobile with 25% assessment, the taxes paid (City, County, and State) Total: \$261.26 including personal Property.

This Legislation, if enacted and approved by a vote of the people, would meet legal requirements and not materially increase the Tax on any class of Property.

THE ALTERNATIVES

60% On a \$25,000 home with 60% assessment, the Taxes paid (City, County, and State) Total: \$762.50 including personal property.

30% On a \$25,000 home with 30% assessment, the Taxes paid (City, County, and State) Total: \$383.75 including personal property.

IF YOU DON'T WANT 30% ASSESSMENT OR COURT ENFORCEMENT OF 60% ASSESSMENT, AND HIGHER TAXES; CONTACT YOUR LEGISLATOR FOR SUPPORT OF THE CLASSIFICATION SYSTEM.

[From the Montgomery (Ala.) Advertiser-Journal, July 23, 1967]

THE FARM-TO-MARKET AD VALOREM BILLS

The shady way in which a "public" hearing was called for Thursday morning on four ad valorem tax bills, together with the bills themselves, should have alarmed every Alabamian who believes in the deliberative process of the Legislature. There was nothing deliberative about this.

First of all, the bills embraced a minority report of the Joint Interim Study Committee on Ad Valorem Taxation. When the "public" hearing was held Thursday, the proponents of the separate and unequal property classification method had been informed, obviously, but opponents had not. It's simpler that way, you know—no controversy.

Thus the bills were railroaded into the Senate, touching off an entirely justifiable filibuster by urban forces who saw the deal for what it was—a rural scheme to soak the cities, business and industry while assessing farmland for purposes of taxation at 15 percent. Utilities would be fixed at 40 percent, personal property at 30 percent, and residential commercial and industrial at 25 percent.

While the question of *value* may be arguable, *rate* is something else. We believe the rate should be nailed down for one and all. Take the urban homeowner for example: the ad valorem taxes he pays are not, generally, based on the earning power of his property (unless he has a still in the attic). To him, the property tax is a *tax on debt*, the mortgage he assumed when he built or bought his home.

While some farmland might not be producing in a fashion commensurate with what it is worth, there is a significant relationship between use and value. The bills introduced would not allow consideration of potential or future value of the land, even if it was ripe for urban expansion or industrial location.

If rates are to be flexible, a good case could be made for taxing farmland at a *higher* rate than homes, instead of the reverse.

Although it has been customary over the years for bucolic-minded assessors to underestimate farm land in arriving at a tax base, this quaint custom should not create an adverse right which should be approved by the Legislature.

It seems clear that the bills introduced are the brainchildren of the Farm Bureau, which is not notably concerned with city folk, business and industry.

Although the public was denied a fair chance to oppose the bills, the Senate filibusterers may be expected to shed some light in the dark corners of this crude example of special pleading and hanky-panky. We hope their lungs are made of leather and that they are prepared to hold out until the frost is on the pumpkin, if necessary.

Ad valorem revision is too serious to be the special property of one group. Every Alabamian has an interest in it. This interest was not represented last week until the urban senators opened fire.

(By Don F. Wasson)

The Black Belt philosophy gained at least a momentary advantage in the Alabama Senate last week but the gain appears destined to wreck the current legislative session and perhaps force a special session.

The action came in a hastily-called, early morning meeting of the Senate Finance and Taxation Committee, which is dominated by rural senators.

The meeting, announced as a public hearing, was little publicized, and while some members of the committee faulted newspapers and television for the lack of publicity, there was little effort on the part of the committee to assure that all interested parties were notified.

Subject of the hearing was a package of four bills which would drastically alter Alabama's ad valorem tax laws. The bills were based on recommendations of a minority report of the Joint Interim Committee on Ad Valorem Taxation.

That study committee has just concluded a six-month study. Some 10 days ago it issued a press statement on its work, outlining 14 major recommendations. As a concluding statement, the report said:

"The committee expects to gather additional information and data and consider further a proposal for dividing property into different classes to be taxed on the basis of different assessment rates."

That statement, purely and simply, said that the majority of the committee was rejecting a proposal of the Alabama Farm Bureau that property in Alabama be classified for assessment purposes.

The Bureau, in a lengthy presentation before a public hearing of the study committee in June, had presented its ideas on how to reform the State's ad valorem tax laws.

The classification system would assess the property of utility firms at 40 percent of their fair market value; tangible and intangible personal property at 30 percent; residential property at 25 percent; and farmland at 15 percent.

One reason the full committee rejected the classification system was that a recent court ruling here held that Alabama ad valorem tax laws were inequitable.

While present law provides that all property be assessed at 60 percent of its fair market value, the court noted that utilities were taxed then at a 40 percent rate, while the state average assessment rate on other business firms and residential property was 17.4 percent. The court ordered a reduction in utility rate assessments to 30 percent over the next three years.

In a closing paragraph, Circuit Judge Eugene W. Carter said:

"The court retains jurisdiction of this cause for the purpose of receiving periodic reports at least annually from respondent (the State) on what steps it has taken to achieve uniformity among all taxpayers in Alabama, whether centrally or locally assessed, as required by the constitution and laws of this State."

The majority of the committee took this as an implied threat that if the legislature does not equalize tax assessments, the court will next April.

The study committee's report, to be issued this week in full, will recommend a statewide reappraisal of property, a "realistic" assessment ratio no higher than 30 percent, and various other reforms to insure equal treatment for all property-holders.

Before the committee report could be handed to members of the legislature, the minority report came out, signed by four of its members. They are Sens. Walter Givhan of Dallas and Jimmy Braynon of Fayette and Reps. Joe McCorquodale of Clarke and Drexel Cook of Coffee.

At the same time the report was issued, the four bills were introduced in the Senate on Tuesday. They were assigned to the Finance and Taxation Committee.

Chairman Alton Turner of Crenshaw announced that day that a public hearing on the bills would be held one hour before the Senate opened Thursday. It was at that time uncertain when the Senate would meet. The notice went up on the bulletin board about 5 p.m. Wednesday, setting the hearing time at 9 a.m. Thursday.

At 5 p.m. Wednesday, the Senate was in a filibuster and the chamber was almost empty from then until adjournment. Thus the posting of the 9 a.m. meeting caught a lot of people by surprise. When the meeting opened there was not a single opponent of the bills present. Farm Bureau officials were out in force however.

Opponents have charged since that the 9 a.m. hour was deliberately chosen by Sen. Turner in agreement with Sen. Roland Cooper, administration floor leader who authorized the bills, and other rural members of the committee, it is unusual for any legislative business to be conducted before 10 a.m. and the opponents of the bills claim Turner and his cohorts used this knowledge to their advantage.

SENATE ERUPTS ON TAX REFORM

The State Senate erupted Thursday over an attempt by its rural faction to push through a four-bill package of ad valorem tax reforms which would set up a classification-of-property system beneficial to farmers.

The bills, introduced Tuesday and pushed through a 9 a.m. committee hearing Thursday, would classify property and set the rate at which it would be assessed for taxation as follows:

Utilities 40 percent.

Personal property, 30 percent..

Residential, commercial and industrial, 25 percent.

Farmland, 15 percent.

The bills would require a constitutional amendment, since the present organic law requires that all property be taxed on the same basis. Also contained in the package are bills to increase the homestead exemption from \$2,000 to \$5,000 and to define what property and persons shall be exempt from provisions of the tax laws.

The speedy manner in which the hearing on the bills was called touched off a filibuster in the Senate. Also adding fuel to the fire was an angry discontent over a morning meeting of the Rules Committee.

In that meeting, called to set up a special priority list of bills already on the calendar, the committee first included but later dropped a bill sponsored by Sen. Bob Harris of Morgan County.

Harris is one of the senators who filibustered Wednesday and lambasted the recently passed highway bond issue bill. In his remarks, he was critical of the way the administration had pushed those bills through the special session last March and April.

When it was decided in the Rules Committee to drop the Harris bill, Sen. Hugh Morrow of Birmingham remarked, "So, this is retaliation day?"

Sen. O. J. (Joe) Goodwyn of Montgomery, president pro tem of the Senate and an administration leader, replied, "That's right."

When the special order calendar was presented later on the floor, Sen. George Lewis Bailes of Jefferson, a frequent administration critic, got the microphone and began the filibuster. At the end of his hour, Rules Chairman Jimmy Clark of Barbour engaged Bailes in a heated exchange.

Lt. Gov. Albert Brewer, president of the Senate, had to intercede two or three times during the debate to calm the senators.

At one point, Clark criticized the opposing senators and the press, blaming them for the slowdown in the legislature.

"The newspapers of this State can go to —," Clark said.

During the debate, the Finance and Taxation Committee report on the four bills was received and given a second reading. This means they will be on the calendar next Tuesday when the Senate reconvenes.

After two hours of filibustering, Sen. Roland Cooper of Wilcox, administration floor leader, abruptly moved for an adjournment, since it was evident the filibuster had enough strength to last all night.

Meanwhile, in the House, Rep. Eugene McLain of Huntsville, a member of a legislative study committee on ad valorem taxes, introduced a bill calling for a statewide reappraisal and revaluation of property and authorizing \$1 million to be spent on the work.

He warned his House colleagues that "even now the supporters of the classification system for assessment rates are at work in this chamber." He urged House members to take a close look at his bill and at the report of the study committee before making any commitments to the Senate package of bills.

"It was my understanding," McLain said, "that our study committee report was unanimous and yet these Senate bills are based upon a minority report."

He said the Senate package of bills "clearly represents the position of the Alabama Farm Bureau," and charged that there are "grave constitutional doubts" about the bills.

RURAL FORCES SHOW POWER

(By Don F. Wasson)

The Senate Finance and Taxation Committee ignored a \$75,000 study committee's majority report on ad valorem tax problems Thursday and placed on the calendar four bills based on a minority report.

The action was a graphic demonstration of the organizational strength of rural forces in the legislature. It was the first battle victory in the continuing war between urban and rural forces over reforms in the State's ad valorem tax program.

The battle lines began forming on July 9 when the Joint Interim Study Committee on Ad Valorem Taxation issued a press statement on the results of its just-concluded, months-long study. It also listed 14 recommendations to the legislature as a result of that study.

In a concluding remark, the committee noted:

"The committee expects to gather additional information and data and consider further a proposal for dividing property into different classes to be taxed on the basis of different assessment rates."

The full committee report, which is in the hands of the printers, has not yet been presented to the legislature. It is a unanimous report, the committee statement said.

Yet on Tuesday of this week, *The Advertiser* came into possession of a minority report signed by four members of the Interim Committee. It recommended that the legislature adopt a property-classification system.

That same day, the four bills were introduced in the Senate and assigned to its Finance and Taxation Committee. The chairman of the committee, Sen. Alton Turner of Crenshaw, said there would be a public hearing on the bills either Wednesday or Thursday, depending on the Senate schedule for the rest of the week.

On Wednesday, about 5 p.m., a notice was put on the Senate bulletin board announcing that the committee would hold a public hearing on the four bills at 9 a.m. Thursday. This meeting was duly noted late in the afternoon and was the basis of a story in Thursday morning's *Advertiser*. Public hearings are customarily given more advance notice so proponents and opponents can plan to attend.

The legal counsel of the study committee, ex-Sen. Neil Metcalf, told The *Advertiser* Thursday that he was not aware of the meeting beforehand. Committee chairman, ex-Sen. Larry Dumas of Birmingham, did not know, Metcalf said, nor did two House members of the study committee questioned Thursday.

The Thursday meeting was unusual in that no opponents of the bills appeared to testify against them.

But the Farm Bureau knew the hearing had been called and was out in force. One critic of the committee action told the *Advertiser*:

"Of course the Farm Bureau knew, one of their officials is a member of the Finance and Taxation Committee."

He was referring to Sen. Walter C. Givhan of Dallas County, who is long-time secretary-treasurer of the Farm Bureau. Sen. Givhan is also a member of the Study Committee and one of the signers of the minority report.

The power of the rural faction can be seen in the fact that Sen. Eddie Gilmore of Birmingham has had a bill in the Finance and Taxation Committee since before the July 4 recess, which also proposes ad valorem tax reforms. He requested a public hearing on that bill at the time it was assigned to the committee, of which he is a member. He was told that there were too many other bills "important to the administration" ahead of his bill.

The Gilmore bill is still in the Finance and Taxation Committee and he failed again Thursday to get a public hearing scheduled for it.

Members of the Finance and Taxation Committee, in addition to Turner, Gilmore and Givhan, are Mylan Engel of Mobile, Jimmy Clark of Barbour, Roland Cooper of Wilcox, Fred Folsom of Cullman, Jack Giles of Madison, Ray Lolley of Coffee, Ollie Nabors of Etowah, Emmett Oden of Franklin, J. J. (Junie) Pierce of Montgomery, E. W. Skidmore of Tuscaloosa, C. C. (Bo) Torbert of Opelika and Paschal (Pat) Vacca of Birmingham.

Cooper is author of the four-bill package. Other signers, also on the F&T committee, are Sens. Lolley, Givhan, Giles, Folsom, Turner, Torbert and Oden.

In the committee hearing Thursday, the only voices raised against the four-bill package were those of Gilmore, Nabors and Engel.

Engel protested that the committee should not report out a package of bills based on the minority report when the legislature has not even seen the majority report.

Clark of Barbour, who is also chairman of the Rules Committee, protested that the committee was not supposed to make recommendations, only to ascertain facts regarding the ad valorem tax situation.

This is true. The act which set up the study committee says:

"... the Committee shall prepare and submit a report of the facts compiled in its detailed, technical study, to include, but not limited to, a comprehensive analysis of the ad valorem tax laws ... etc."

Neither does the act allow the minority to make recommendations. But Cooper testified Thursday, that the minority report was the basis on which the four-bill package was based.

What has happened is plain.

The rural faction, displeased at the committee's report, hastened its own ad valorem tax reform program and, with its domination of the major committees in both Houses, is attempting to push the bills through.

What chance do they have?

Many observers said Thursday that the bold push was ill-advised, that it only angered the urban faction and stiffened their determination to put through a reform package of their own.

APPENDIX E—KENTUCKY CLIPPING

[From the Courier-Journal, Louisville, Ky., Mar. 19, 1966]

LOBBYING BY BREATHITT SAVES BILL PREVENTING ROLLBACK IN UTILITIES' TAX

(By Allan M. Trout)

FRANKFORT, KY.—Hours of personal lobbying yesterday by Gov. Edward T. Breathitt led to the legislature's approval of a measure to insure that taxes paid by public utilities and railroads could not be reduced \$5.5 million in the next two years.

The reduction could have occurred as a result of full-cash assessment of property and a 1965 law rolling back tax rates to offsetting levels.

The Senate approved the measure, 29-3, and the House concurred 76-5.

The action started at 11 a.m. in the Senate, but a ruling by Lt. Gov. Harry Lee Waterfield, president, delayed it four hours. After an hour of wrangling, the Senate sent its approved measure to the House, where action was completed at 6:50 p.m.

Governor Breathitt began personal lobbying on the Senate floor at 9:30 a.m., 90 minutes before the upper chamber convened.

At 2 p.m., the governor went to the corridors outside the House chamber and, for four hours, talked to every representative who'd listen. His full staff of aides also lobbied with members of both chambers all day.

The issue was so sensitive that Sen. J. D. Buckman, D-Shepherdsville, majority leader, warned that an immediate special session would be required if the measure failed.

Waterfield predicted from the chair that a special session will have to be called in the near future, anyway, to "adjust inequities in property taxation that have developed since the Court of Appeals ruled that assessment must be at fair cash value."

Meanwhile, the Legislative Research Commission directed a memorandum to members, asking them not to remove their nameplates from the desks, as they possibly would be needed for a special session.

The issue arose against this background:

Following the Court of Appeals mandate that property be assessed at 100 per cent of value, a 1965 special session of the Legislature directed that tax rates be rolled back in proportion, so that taxpayers would pay about as much after as before.

AVERAGE UNDER 30 PER CENT

Generally, property throughout the state had been assessed from 20 to 40 percent with the average just under 30 percent. But the assessment of public utilities and railroads, made annually by the state, was at 60 percent of full value.

Thus, at 100 percent assessment, with compensating rollback in rates, railroads and public utilities would have paid substantially less, when compared with owners whose property had been assessed at 30 percent.

The measure adopted yesterday specifies that tax rates for railroads and public utilities must be adjusted so that, in 1966 and 1967, they will not pay less than they did in 1965. Thus saved for cities, counties and school districts is around \$5.5 million that otherwise would have been shifted to owners of homes, farms and the like in the 1966-68 period covered by the new act.

The parliamentary device to obtain passage of the act has been used successfully only three times in the last 25 years. Object of the procedure is to bypass the provision of the Constitution that an absolute minimum of five days is required to enact a bill into law.

The action is not suited to any time other than the closing hours of a session. Here is how it works:

In the Senate, say, an innocuous little bill is selected that has passed the House and has had two readings in the Senate. It is ready for immediate floor action. It is called up for action. The new matter is offered as an amendment to supplant everything in the bill below the enacting clause.

The amendment is adopted, in this instance by the Senate and the bill, still bearing its original House number, is returned to the lower chamber for concurrence in the amendment. Thus, it is possible, in an hour or so, to do what otherwise requires at least five days.

In the early 1940's, this device was used in the closing hours of a session to exempt the wartime tax of \$9 a gallon on whisky from the compulsory markups of Kentucky's Fair Trade Act.

In the middle 1940's the same procedure was used to locate what is now the Capitol Annex on grounds immediately behind the Capitol. The bill demolished in this legislative legerdemain, as originally drawn, would have substituted a gas chamber for the electric chair at the Eddyville penitentiary.

The innocuous little bill used in yesterday's sleight-of-hand started out as House Bill 320. It merely reduced the State tax rate from 4 to 1½ cents on personal property in public warehouses awaiting shipment. Involved were not more than a few thousand dollars, whereas HB 320 as it now stands must be viewed in terms of \$5.5 million.

TO LIFE THURSDAY

The Breathitt administration brought HB 320 to first life Thursday. Waterfield ruled that the amendment was out of order, inasmuch as revenue bills must originate in the House. The administration fell four short of the 20 votes required to override his ruling.

Waterfield ruled yesterday morning that, to again bring up HB 320 required a suspension of the rules. The administration fell one short of the 20 votes required to suspend them.

Four hours later, however, the administration had drummed up three more votes, giving it a clear majority of 22 to 8 on a motion to override Waterfield's second ruling that the amendment was out of order.

With his whip hand thus fortified, Buckman lashed the bill through to the final vote of 29 to 3. But the floor leader's caution backfired in unexpected quarters. Before floor action started, he instructed the doorkeepers not to let anybody in or out of the chamber until the final roll call was completed.

HUNT SOUGHT ADMISSION

It so happened that Rep. Howard Hunt, D-Danville, sought admission to the upper chamber during this period, and was denied entrance. He reported it to the House, whereupon the House voted not to admit any senator to its floor before final adjournment. Moreover, the House later voted against permitting senators to view the Kentucky-Duke basketball game on the television set installed in the House for that special occasion.

The House required less than 10 minutes to agree to the Senate amendment, thus putting HB 320 in position for immediate delivery to the Governor for a signature of approval, backstopped by perhaps six hours of patient, personal pleading with legislators in the best tradition of gumshoe lobbying.

APPENDIX E—LOUISIANA CLIPPINGS

[From the Times-Picayune, New Orleans, La., Feb. 18, 1966]

FAIR TAX PLAN BOWS TO POLITICS

Governor McKeithen's fair tax program has been junked and the junking comes about largely at the behest of parish politicians whose power and hold on office has been conserved by the inequitable property tax system.

The Governor's reversal on assessment equalization is, in our judgment, acknowledgment that not only the virtues of just taxation but the enforcement of State laws must yield to the expediences of politics at this point in history.

Efforts of the Governor to reach some kind of accord with the hostile assessors at the Louisiana Assessors' Association meeting at Baton Rouge last week failed. The members of the Legislature were polled for their views. "They report," said the Governor, "misunderstanding, distrust, fear and suspicion among groups of our citizens . . . and the situation continues to grow worse . . . Our State cannot continue to progress with this feeling among our citizens."

This description does not expose the political tactics that bring on most of the "misunderstanding, mistrust" etc. The real fear and public concern should be for the possible court orders which in the experience of three other states recently have not allowed for the gradualism and the deliberate equalization planning provided in our now abandoned program. Why the Legislature was polled is not completely clear, since it is not being asked for any laws. The tax

statutes as well as the constitutional requirement for equalization have been on the books for years, and ignored equally as long.

Governor McKeithen, of course, has shown many times that he knows the assessment practices are grossly inequitable as well as contrary to the laws. He appointed the committee which recommended the five-year program which he said the administration was going to put into effect. He has said the courts would almost surely intervene to stop the injustices unless the program were carried out. He knows the equalization is an enforcement and not a legislative task, and he is the State's chief enforcement officer.

But the Governor is seasoned in Louisiana politics. It will be noted that in the calling a halt to the preparatory work of the tax commission and its advisors he threw the opposition an additional sop by call on the attorney general to prepare to defend "aggressively and vigorously" against all suits to compel compliance with the equalization laws. And if he has not heard the hints from the parish politicians, he is about the only person in political life that hasn't—that he is going to need help in the Legislature for apportionment and the "Governor powers" bills being written in preparation for the statewide vote for the two-term amendment this fall.

The Governor's expectation that the lawsuits will be pressed is probably justified. Victims of the unfair assessment system should get relief. They could provide Mr. Gremillion with a bushel of suits to fight off.

In collecting its property taxes, the State exacts more than four times as much from a property owner in Caddo as it does from an owner of property of the same value in Lafayette. Such an inequity is repeated many thousands of times in the imposition of both State and local taxes. The unfair treatment is accorded both home owners and businesses.

The assessors have opposed the effort to eliminate such unfair exactions openly and vigorously. A spokesman said they object to "this dangerous plan which would place too much power in the hands of the appointed tax commissioners and not enough in the hands of assessors as elected officials." The plan doesn't do anything of the sort. It's the law that says what shall be done. And if the flouting of the law results in bringing on some jolting court decisions along with confusion and grief engendered by fast compliance, the public should know whom to blame.

Court suits may eliminate some of the inequities which are obvious in present assessment practices. In the meantime, we believe that more and more citizens are becoming conscious of the harm being done by these practices and one of these days will take steps to correct them with the voting machines.

[From the Times-Picayune, New Orleans, La., Feb. 17, 1966]

UNIT ON TAX ISSUE ENDS

M'KEITHEN CALLS HALT ON EQUALIZATION

(By C. M. Hargroder)

BATON ROUGE, LA.—Gov. John J. McKeithen Wednesday scrapped his committee on tax equalization and called for a complete halt in its activity.

McKeithen said he had polled the Legislature and "more than a two-thirds majority of them feel we should take no action at all looking toward uniform assessments until the matter is finally settled in the courts."

While the Governor apparently breathed a sigh of relief at refrigerating the potentially hot political potato, members of the tax commission, excepting Mrs. Earl K. Long and chairman Leo J. Theriot, could not be reached for comment. Theriot, said: "I have just received the Governor's statement concerning tax equalization in Louisiana.

"As chairman of the Louisiana Tax Commission, I certainly concur in the Governor's statement that we take no action at all looking toward uniform assessments until there is no alternate course to follow.

LOUISIANA NOT READY

"Even though a gradual approach to equalization could prove beneficial to the State, my contact with the individual taxpayers and the local tax assessors and other officials in Louisiana has indicated time and time again that our people are not ready for equalization.

"I think that the Governor was absolutely right in ending the equalization movement.

"I will have an additional statement in detail at a later date."

Mrs. Long declined to comment until the tax commission receives a copy of the Governor's statement which she said he was sending. Meanwhile there were reports that Mrs. Long and Mrs. Wilma Lockhart might resign their seats on the three-member tax body.

Both have been among leaders pushing equalization of property tax assessments.

Only scant weeks ago Gov. McKeithen announced creation of a special committee of the tax commission, the Louisiana Assessors Assn. and a member of the Louisiana Farm Bureau to work with Leon Gary, his administrative assistant, to seek a solution.

Late Wednesday, John M. Smith, Bastrop, president of the assessors and a member of the special committee, said the group decided to dissolve after they found it was "unworkable" and so informed the Governor.

Said Smith:

"This committee is not and never has been in favor of the proposed five-year plan on equalization, and contrary to the belief of many individuals, it was never proposed that this committee be used to implement this plan.

"We have opposed it from the very beginning as a dangerous plan that places entirely too much power in the hands of the appointed tax commissioners and not enough authority in the hands of the assessors as the elected officials."

Smith added that the committee had "accomplished nothing" and "we have not enhanced the working relationship between the assessors and the tax commission."

'DISTRUST' REPORTED

In his statement, McKeithen said legislators reported "widespread misunderstanding, distrust, fear and suspicion among groups of our citizens and that this situation continues to grow worse."

He added he was giving a copy of his statement to Atty. Gen. Jack P. F. Gremillion so that he could prepare "to defend aggressively and vigorously any action brought against us by any and all persons or groups to force us to equalize statewide tax assessment.

Previously, the Governor had warned that a suit was being prepared by a group of Baton Rouge taxpayers similar to one filed at Shreveport to force statewide equalization of assessments.

"So long as I am Governor of Louisiana," McKeithen promised, "there will be no equalization of property assessments until the time that our state attorney general advises us that we are faced with a final court decision from which there is no alternative."

The poll which the Governor mentioned was apparently taken by Gary in the absence of the Governor who has been attending a convention at Las Vegas, Nev., the past two days.

McKeithen's statement halting administration activity in tax equalization was interpreted as still another effort to remove chances of controversy in the upcoming May session of the Legislature which already faces a reapportionment showdown in the Senate, and probably in the House as well.

[From the New Orleans Times-Picayune, Feb. 8, 1966]

McKEITHEN, N. O. SOLONS CONFER

DORMITORIES FOR LSUNO UP TO LEGISLATURE—GOV.

(By Gene Barnes)

Gov. John J. McKeithen put his cards on the table for New Orleans legislators Monday night on such topics as tax assessments equalization, reapportionment and teacher pay raise prospects.

He also reported determination to make the city's proposed superdome stadium a reality and took a noncommittal stand on the question of dormitories at Louisiana State University in New Orleans. But he said he would go along with any action of the Legislature to build such dormitories.

The action came at a closed meeting in the Fontainebleau Motor Hotel called by State Reps. Edward F. LeBreton Jr. and Salvador Anzelmo. Purpose of the meeting, which followed a dinner, was to discuss the May legislative session.

Questioned after the meeting about whether he discussed proposed equalization of tax assessments the Governor said he told the delegation the State must take action on that matter and on reapportionment of the Senate before the Federal courts move.

"I said our legislators, tax assessors and Governor can work better to protect the people than the courts can or will," said McKeithen. "It's a question of whether we want to protect our people or leave it to the courts."

McKeithen said he spent more than an hour talking to the Governor of Kentucky recently where the courts ordered equalization overnight. He said the Governor enumerated monumental problems caused by the court action.

[From the Times-Picayune, New Orleans, La., Jan. 21, 1966]

STATE TAX CHAIRMAN GOES ON RECORD

Comment of the State Tax Commission chairman, Leo J. Theriot, on Louisiana's tax equalization project is timely because the commission is the official implementing body for the fair assessment plan, and its decisions will be the main factor in the degree of its success.

Chairman Theriot wants it known that while the commission has given approval to the plan offered by its Advisory Committee of citizens, it would be premature, in advance of a detailed commission study, to say that the report in all its aspects will be carried out as recommended. He also makes it known that the tax commission would frown on any use of the equalization plan as an instrument to increase taxes. That is the position taken by the Governor; and the Advisory Committee has cautioned that tax equalization has nothing to do with tax raising.

Mr. Theriot points out that all taxing and assessing authorities would be affected, and that the commission must not only consult these but also determine in advance any effects of changes on the taxpayers. We don't think there is much argument about the necessity of proceeding carefully. The Advisory Committee itself has said its plan is not a closed program but one about which it wants the views of interested parties.

Like a good many other people, Mr. Theriot appears interested in the process of adjusting millage and the percentage of assessments on which taxes are collected after equalization and eventual compliance with the law on the "actual cash value" of listing property.

These adjustments are necessary but complicated essentials that must be worked out properly in order to make good on the commitment that equalization is not a tax raiser.

As the Tax Commission studies and firms up the program in detail, it seems to us that steps should be taken to organize expert assistance for parish and city governing bodies and other taxing agencies to carry through the conciliation of millages and taxing percentages with the new assessments. It has already been mentioned that a few changes in the law may be needed to make the plan workable. But the problems are not prohibitively difficult for several states have dealt with them successfully.

Time taking consultations and hearings should not delay the Tax Commission preliminary moves toward equalization. Unless the ratio studies and property appraisal work is pressed, the commission may find the program cannot be completed within the five-year period.

APPENDIX E—TENNESSEE CLIPPING

[From the Nashville Tennessean, Mar. 2, 1966]

CLEMENT CALLS SPECIAL SESSION

1970 EARLIEST FOR TAX SHIFT—MCCANLESS

(By Bill Kovach)

No tax changes in the state constitution could go into effect before 1970 if a special session of the legislature initiates an amendment, state Atty. Gen. George McCannless said yesterday.

Gov. Frank G. Clement issued a surprise call yesterday for a special session beginning March 14, to consider a constitutional amendment to allow property tax classifications and to dispose of an expected \$25 million surplus.

McCanless said two successive legislatures would have to pass the proposed amendment. Then the people would vote at the next general election in which a Governor is chosen.

"Since two legislatures have to pass the amendment, the earliest gubernatorial election would be 1970," McCanless said.

He said the alternate method of passing an amendment—via a constitutional convention—would take longer because a convention cannot meet but once in six years. He said the limited constitutional convention now in session, but recessed, is not allowed to consider the property tax amendment.

Because of the constitutional six-year limitation, another convention could not be called before 1971. The one now in session began last year.

Most members of the General Assembly said the call took them by surprise and they had not had time to study the matter. Many indicated they thought the Governor was moving too fast for a constitutional amendment on the tax question.

Sen. Jimmy Walker, D-Bethel Springs, said he thought the special session "is nothing but a big political play for Clement to get votes for his election this summer.

"As far as getting anything done for the State, it's like locking the door after the horse has already gone."

Walker said he was definitely against the session, adding:

"I understand it is not only concerning the property tax, but I don't think there is any other reason for it, knowing Clement as I do . . . There can be nothing but political implications behind it.

"I think it is a fool move for the State government."

Though Clement, at a hurriedly called press conference yesterday morning, spent little time talking about the surplus and declined to give any estimate of how large the surplus is, most observers believed this to be the basic reason for his special session call.

The surplus existing because of a broadening of the 3 percent sales tax to utilities in 1963 was a prime issue in the 1964 campaign in which Clement was defeated by Sen. Ross Bass.

Very few legislators contacted by a *Nashville Tennessean* poll on legislative reaction discussed the surplus. They confined their remarks to the tax question.

David Keeble, attorney for L&N Railroad whose lawsuit resulted in a Federal court ruling that all property, including utilities, must be assessed equally in Tennessee, said the special session was futile and would solve nothing.

"It is my opinion that if this discrimination is applied to railroads or carriers, it does not present a solution, and I believe that such a discrimination, with or without any amendments, will be invalidated by the courts or by Congressional action as an undue burden on interstate commerce," he said.

Clement said at his press conference that he will appoint a tax study commission to look into the property tax laws in the State and recommended changes.

"We will do nothing, however," Clement said, "to promote an individual income tax . . . the key word is classification."

Clement spelled out three proposals for the limited session:

Initiation of the constitutional amendment, which he said the administration will sponsor, to allow different types of property to be taxed at different rates.

Provision for providing technical assistance for the administration and revision of tax assessment laws.

Appropriation of existing and anticipated budget surplus.

The action, Clement said, is necessary to "help bring order out of chaos."

In the L&N case, U.S. Dist. Judge William E. Miller ruled that the railroad was the object of discrimination in property tax assessments. He has enjoined the State from collecting the taxes until the discrimination has been ended.

A similar ruling was issued by Davidson County Chancellor Alfred Adams in a Southern Railway suit. Both rulings have been appealed by the State.

The State constitution now provides that all property must be assessed equally. State laws require that all assessments be at 100 percent of value. By practice, however, local property has been assessed at only 30 percent while utilities have generally carried higher assessments.

Classifying property would permit assessing various kinds of property at various levels—exactly the thing which the L&N and Southern railroads were fighting in winning, respectively, Federal and State court verdicts that it is illegal.

In addition to the special session call, Clement said he would make the following executive action:

Appoint a tax study commission to study tax structure and make recommendations for changes.

Ask the State Board of Equalization to obtain the services of the University of Tennessee professional staff and members to work with the board and study commission.

Appoint additional legal counsel to work with the board and the state attorney general on such matters as they deem necessary.

Clement notified the members of legislature yesterday by wire of the special call.

The Governor notified a number of senators by conference telephone calls after his press conference.

Sen. Stanley Snodgrass of Nashville said he was included in a conference call at 1:15 p.m. yesterday with the Governor and Sens. Robert C. Taylor, Nashville, Joe C. Holbrook, Dresden, Ernest Crouch, McMinnville, and Ed Turner, Carthage.

Sen. Edward M. Todd, D-Memphis, said he joined a "half dozen other senators" in a conference call.

Sen. Joe C. Holbrook, D-Dresden, said that "Clement outlined the three programs he had proposed for the special session, one was the tax law suit, another was concerning the surplus we had and using it to the advantages of the people, the third was to try to do something to help the teachers.

"I think the main reason for calling the session is to get the reaction of the people to see what they want to do about the surplus," Holbrook said.

Most of the legislators contacted by the *Tennessean* poll said they thought the tax assessment question was of vital importance. However, some had reservations about the special session and what it could accomplish.

"What concerns me," Snodgrass said, "is why we have waited to this late date, prior to important upcoming elections, to consider these matters. The need for a revision of the tax assessment laws has been obvious for a long time."

Crouch, who is an administration floor leader, said he felt "the urgency of the situation . . . will justify an extraordinary session."

Sen. Leland Carter, D-Memphis, said, however, the purpose of "a special session should be to pass a bill making all local governments assess properties at 100 percent of valuation in order to equalize the tax burden among counties."

He said Clement's proposal for an amendment to permit classifying of property "would not be a solution to the problem as far as Shelby County is concerned."

Taylor said he was "satisfied these matters need attention—the question is whether they are so immediate." He said he didn't think the tax assessment question "should be decided on the spur of the moment."

No one was caught quite so short as Sen. Cartter Patten, D-Chattanooga, who was fishing and boating in South America when the Governor made his announcement. Patten's secretary said she would notify him by letter—but added that Patten was planning to return next Tuesday anyway.

Other comments by legislators of the special session:

Sen. Roy D. Crawford, R-Maryville—"I think time is essential. The condition of the railroad suit at this time points up some pretty severe physical problems for the smaller counties. I think it is of sufficient importance (to call the session)."

Sen. Ward Crutchfield, D-Chattanooga—"I think it is an important problem. We independent senators have been favoring annual sessions for some time. This will be the second special session, and an annual session would have solved this problem. Whether this (tax assessment question) is cause yet for a special session. I haven't decided."

Rep. Jerry F. Agee, D-Nashville—"I haven't received a notice of the special session yet, but I think it is justified because the people cannot afford to pay more taxes than they already do."

Sen. Halbert Harvill, D-Clarksville—"I haven't been able to find out about it, it is so indefinite . . . I want to know what, when and how."

Sen. Reager Motlow, D-Lynchburg—"I think something needs to be done, and I think he (Clement) is using good judgment in doing so. I think the new tax problem is as big a problem as the old one in making it applicable to everybody."

Rep. G. L. McMinn, R-Etowah—"I understand we have about \$20 million surplus, and I am going to have to look at it before I make up my mind. I opposed the extension of the sales tax in the first place. I thought we had adequate funds to begin with."

Rep. Edwin H. Arnold, R-London—"Personally, I think we have met to death, but if it is an emergency we need to meet on, then I will do my part."

Rep. Lewis Pride, D-Nashville, said he was adopting a "wait-and-see" attitude about the session itself. He did say he felt the legislature should have a voice in spending the surplus.

Sen. William Jerry Flippin, D-Milan—"I am aware of the judicial decisions about the tax cases. Between now and March 14 I will acquaint myself with these matters. At this time I can't say (whether the special session is justified)."

Sen. John F. Dugger, R-Morristown—"I don't want to comment."

Sen. Frank Gorrell, D-Nashville—"As a result of the Federal and State court decisions, it is imperative that the State legislature act in order to protect many of our local communities and many of our citizens from financial difficulties. The legislature must now come to grips with the problems and bring forth a solution that is fair and just to all the citizens of our State."

APPENDIX F

[From the Railway Employees Journal, June 1967]

RAILROADS CARRY HEAVY TAX BURDEN

About a dime out of every dollar railroads take in goes out to pay tax bills. In the pre-war period, only six cents out of the average railroad revenue dollar was absorbed by taxes. Railroad tax bills went up steadily during the war, as did those of individuals and all industries. Federal income taxes then became a major factor in all annual taxes. They reached an annual average of more than three quarters of a billion dollars on the railroad industry in the war period. They are not now the greatest factor in the total tax bill. Railroad Federal income taxes have gone down as net earnings have declined. They represented only about one-fourth of the railroad tax bill last year.

A total of \$1,010,000,000 in taxes was paid by the industry last year. Federal income, State and local taxes amounted to over half the total. They should be considered separately from payroll taxes, which have become the biggest factor in the total bill. They are different from tax revenues used to meet the expenses of Federal, State, and local governments. Payroll tax revenues are used only to support the retirement and unemployment insurance systems from which railroad workers benefit. Workers in all other industries benefit from like taxes. But a more significant fact stands out. Federal income, State and local taxes take more money out of the railroads annually than are paid out in interest on bonds or in dividends to stockholders.

Official reports show railroad payment of dividends last year amounting to 467 million dollars. That figure is misleading, however, unless it is considered that one-third of the amount is actually paid to railroads owning stock in other railroads. Dividends paid to the stock-owning lines are an element in their earnings and do not go out of the industry. They, in fact, are subject to double taxation. Appearing first in the income of one railroad, they are a factor in the income taxes that line pays and appear again in the income of the stock-owning line. They add to the net income of that line and are again taxed under Federal law.

Railroads make no complaint about undue discrimination against them in either payroll or Federal income taxes. The situation with respect to State and local taxes is different. Federal income and payroll taxes apply to all alike. It has been the practice, however, in many States to assess railroad property at a higher percentage of its value than other property. Court proceedings have relieved railroads in some States from this discrimination, and now it is estimated that discrimination against them amounts to about 75 million dollars a year.

Comparison of tax payments in the States, on the basis of relative railroad mileages, is not always fair because of variations in State laws and taxation policies. Such comparisons of taxes levied against railroad property in States with substantially equal mileage indicate that a number of States are still out of line. For instance, in one group of States, each with between four and five thousand miles of railroad, the tax bills range upward from a low of less than five million dollars in one State to a high of 14 and one-half million dollars in another. Railroad mileage is the lowest in the state in which tax payments are the highest.

In another group, each State with between two and three thousand railway miles, taxes in the State with the least mileage are almost four times greater than in one other State in the group and twice as great as those in the State with the largest railroad mileage in the group. In 15 States, each with five thousand

or more miles of railroad, assessed valuations appear to be on a more nearly uniform basis, although there are signs of discrimination in some instances. Court proceedings are pending in several States to stop discrimination against railroads by assessing their property at higher percentage of its current value than that placed on other property.

Such proceedings, of course, must start in the States. Court proceedings in several instances have resulted in decisions that assessed valuations of railroad property were unfair and unjust without relief from proven discrimination. Local authorities have been reluctant to accept decisions of lower courts and have resorted to appeals to indefinitely postpone corrective action. A bill in which ten other Senators have joined Senator Magnuson in sponsoring, consequently is important.

This bill would so amend present Federal law as to make assessment of railroad property at a higher percentage of its value than other property unlawful. Simple in its terms, the bill provides that State or local taxation of transportation property "at a value which bears a higher ratio to its true market value than all other property" is an unreasonable and unjust discrimination against and an undue burden on interstate commerce.

In introducing the bill, Senator Magnuson stated that "it would in no way alter the freedom of a State to tax its citizens as long as common carriers are accorded equal tax treatment" and that "the burden of proving equality would be placed on the carrier seeking relief." In a majority of States, equality treatment of all taxpayers is being practiced. The bill will not affect them. Change would be required in other States only after carriers show they are being discriminated against. Experience has indicated plainly that discriminatory practices will continue without Federal action. No reason appears why Congress should hesitate in passing the Magnuson bill.

Discrimination against railroads in taxation by State and local governments is one of the handicaps public policies have loaded on them. No carriers competing with railroads contribute tax support of State and local governments on the scale that railroads do. They pay such taxes only on their equipment. Air carriers benefit from special services government furnishes and from use of municipally owned airports free from local taxes. Highway and waterway carriers benefit commercially in use of roads and channels government provides and maintains for them. Highway carrier claims that payment of gasoline and excise taxes fully cover their State and local tax obligations are discounted by the fact that in most States revenues raised by such taxes are restricted to spending for highway purposes.

Passage of the Magnuson measure and approval of the use tax measures President Johnson has repeatedly proposed will be important first steps toward a modern national transportation policy establishing what the President has described as "constructive competition" from which the country as a whole will benefit.

EXHIBIT No. 1

TEXAS A. & M. UNIVERSITY,

College Station, Tex., February 7, 1966.

Mr. JAMES N. OGDEN,
Vice President and General Counsel,
Gulf, Mobile & Ohio Railroad Company, Mobile, Ala.

Dear Mr. OGDEN: After going over HR 4972, your testimony in 1964 and the Hartman-Sanders paper, I find nothing that I can add to our report of 1961 on national transportation policy. Since that was written, nothing has been developed which would cause me to doubt the accuracy of our conclusion that there is ample evidence that railroad operating property has been and still is subject to discriminatory assessment for tax purposes in a number of localities. We all know that progress has been made in some States. It is not enough.

Mr. Rogers' bill seems adequate for the purpose and is probably the most that could be achieved at this time. I am still of the belief that a real case in equitable treatment could be made for exempting private way from all ad valorem taxation. I don't think this very likely except as a subsidy to deficit commuter service.

Discriminatory taxation of corporate enterprise has no place in a competitive economy. HR 4972 is a step in the right direction. I sincerely hope you can get this constructive bill enacted into law. It is too bad the several States couldn't do it on their own without Federal intervention.

Sincerely,

JOHN P. DOYLE.

TEXAS A. & M. UNIVERSITY,
COLLEGE OF ENGINEERING,
College Station, Tex., July 14, 1967.

Mr. JAMES N. OGDEN,
*Vice President and General Counsel,
Gulf, Mobile & Ohio Railroad Company, Mobile, Ala.*

Dear Mr. OGDEN: As we know, progress is being made toward the correction of excessive assessment of railroad property for purposes of ad valorem taxation. Unfortunately, this progress is not general throughout the United States, it moves at too slow a pace and it is a costly procedure for the railroads.

Regarding your request for comment on S. 927, Ninetieth Congress, it appears that this bill will do everything that S. 2988, Eighty-ninth Congress was intended to do. The present bill states its intent more clearly, which should help resolve some of the objections to the earlier proposal—S. 2988 and HR 4972.

In my opinion the conditions described in our Senate Report No. 445, Eighty-seventh Congress, still prevail to an unwarranted extent. The difference is one of degree. I believe the remedy recommended therein is still needed and the supporting reasoning as valid as when written in 1960. All is a matter of public record.

May I wish you success in your long quest for equitable treatment.

Sincerely,

JOHN P. DOYLE.

Major General John P. Doyle, United States Air Force, Retired, currently occupying the MacDonald Chair of Transportation at Texas A&M University, is a graduate of the United States Military Academy and the Advanced Management Course from the Harvard School of Business. Prior to his retirement in 1956, he was Director of Transportation for the Air Force. Subsequent thereto he was a consulting engineer in transportation and a member of the Board of Directors of Transportation Consultants Inc. of Washington, D.C. He was recalled to active duty in 1959 to serve as director of a study of national transportation policy for the Interstate and Foreign Commerce Committee of the U.S. Senate (as it was then known). The report (Senate Report 445, 87th Congress, 1st Session) was completed in December 1960, after which he reverted status and resumed his work with Transportation Consultants Inc. until accepting his present position in September 1962. He is the author of a number of technical papers dealing primarily with transportation.

EXHIBIT 2

STATEMENT OF DR. HAROLD M. GROVES, PROFESSOR OF ECONOMICS, UNIVERSITY OF WISCONSIN

Mr. Chairman and gentlemen, my name is Harold M. Groves and I am professor of economics at the University of Wisconsin. I am offering this statement on my own account and at the invitation of the Association of American Railroads which association has made available to me a copy of S. 927, together with a copy of the proceedings involving similar bills in the 89th Congress entitled "Tax Assessments on Common Carrier Property"—hearing before the committee on Interstate and Foreign Commerce, House of Representatives, 89th Congress, 2nd Session on HR 4972, (March 1 and 2, 1966), as well as similar bills and material considered during the 88th Congress. I also reviewed the statement by Senator Magnuson at the time he introduced S. 927 explaining the differences that exist between the current bill and those considered by prior Congresses.

I have appeared in court several times in railroad tax cases generally as a witness for the State. But in the instance of this legislation, the railroads have my heartfelt sympathy and approval. I am interested in this proposed legislation among other reasons because it would be of benefit to the citizens of Wisconsin of which I am one. Our State has applied an ad valorem tax to railroads since 1903. It was argued at that time that the railroads were not paying their fair share of taxes under a gross receipts tax. The railroads answered that they would inevitably be victimized under the ad valorem system with the application of an average State rate to their assessment. They would be assessed in full by a State tax commission and other property would continue to be assessed by a multitude of amateur local assessors under varying competitive pressures at various fractional values. The railroads were assured that the State could and

would develop methods of evaluating all taxable property in the State and develop an average State rate independent of local assessments. They were assured that the program was only asking the railroads to pay their fair share, not more than their fair share.

The State has made good on this assurance. It at once started to develop the method of State assessment by sampling and used recently sold property as a test of the level of local assessments. This testing came in time to be trusted exclusively to a civil service staff decentralized in regional offices throughout the State. The sampling process went through a long period of refinement; equalizers learned to "field the sales" in discarding nontypical transactions; to supplement sales by spot appraisals; and to classify samples by types of property. Today market-value figures are developed for every town, village, and city in the State. They are widely accepted as adequate by county boards, the courts, the railroads, and the public.

I cite this experience not only as evidence that objective and reasonable State evaluation of general property is feasible: States that are reconciled to fair taxation of railroads have a stake in the fair taxation of railroads generally. Since the incidence of railway taxation is on the users and rate charges offer no territorial discrimination, it is apparent that Wisconsin businessmen and consumers share the burden of discrimination anywhere.

The principle of neutrality in taxation calls for an even-handed application of property taxes to business properties so as to intervene as little as necessary in the process of competition and the allocation of resources according to consumers' preferences. Railroads are by their nature especially vulnerable to the property tax even without discrimination. The effect of this on the balance of competition is described by Dick Netzer in his recent book, "The Economics of the Property Tax" (Brookings: p. 73) as follows:

"Railroads are inherently real property intensive and thus subject to heavier property taxation than air, water, and road competitors. In 1957, for example, property taxes absorbed nearly 3.5 percent of all rail operating revenues, but only 0.4 percent for motor carriers and 0.2 percent for air carriers. Rising property taxes in postwar years imposed costs on railroads far in excess of any parallel general tax confronting their competitors, and contributed to increases in railroad rates, hardly a good competitive strategy for a hard-pressed industry."

Thus, discrimination *against* interstate carriers may have the effect of discrimination *among* interstate carriers. Property tax discrimination can matter very little to competitors who are not particularly vulnerable to the property tax, but it is quite crucial for railroads.

I believe in our Federal system and subscribe to the view that generally the States should remain free to enact, design, and administer their own laws and determine their own tax policies. But a strong case can be made for a Federal limitation on the application of State property taxes to railroads. Not only do railroads at the present time present a national problem of special significance; railroads are especially vulnerable to State discrimination. Interstate manufacturing and mercantile firms are protected by their relative freedom to locate and do business elsewhere. Railroad property is uniquely captive and it constitutes an open invitation to be milked by a particular State at the expense of other States and of transportation in general.

Railroads are unique in other respects. They are among the few taxpayers assessed by a State body with a civil service staff instructed as a rule to bring in an assessment based on full value. Local assessors far too often copy one another's mistakes. Especially when there is inflation, this means a steadily decreasing overall assessment ratio. Railroads, too, are almost entirely interstate. This means, as I have explained, that the overburden on part of the line is absorbed by other parts.

A statement by Ronald Welch of California made in a humorous mood illustrates the above. Commenting on a paper read before the National Tax Association Convention in 1964 (*Proceedings*, p. 487), he calculated California's excess taxes on railroads which he says is about 10 percent of the national excess as reported by *Railway Age* on December 9, 1963. "Since we have about 10 percent of the Nation's economy, we feel it is only just and proper that we should get 10 percent of the excessive taxes on railroads!"

He added that he was not concerned personally about submitting California assessments to the Federal courts, as we should be willing to submit our taxes to the scrutiny of any court in the land.

It is true that court protection against arbitrary and incompetent assessment is generally weak. The development of adequate sales-ratio studies by districts

would help taxpayers generally to make effective appeals. The proposed legislation would promote such development.

It may be said that the proposed legislation affords no protection against excessive gross income taxes and would afford an invitation to the States to shift from ad valorem to alternative forms of railroad taxation. Some of the discrimination against railroads is deliberate, but I believe much of it is de facto growing out of imperfections in the equalization features of property tax laws. The proposed legislation may not be broad enough to eliminate all discrimination, but it would make a good start in eliminating that part of it which is procedural. This much control at least commands disinterested support in terms of improvement in State property tax administration.

The point is made that the proposed legislation would shackle the power and right of the States to classify property. Not many States classify property for assessment; most of them strive somewhat half-heartedly toward the uniformity that is required by their constitutions and/or statutes. There is nothing in this proposed legislation that prohibits classification; it only prohibits adverse classification of interstate carriers and only as to the assessment (valuation) of property. There are other means of classification such as deliberate rate discrimination and the application of special taxes that would still be available if a State genuinely wishes to discriminate in its business tax system. But at least the back-door discrimination by administrative subterfuges would be barred.

The existence of widespread and substantial discrimination is common knowledge and in addition is well-documented. I shall not elaborate here on adequate testimony from other sources. The only reasonable support for the no-needed argument is that adequate remedy is available in state courts. The opposing view is supported by the testimony of James N. Ogden and others as to frustrating experiences with the courts of some States. I do not question the integrity of State courts, but it is human nature to accommodate in some degree the revenue needs of one's own State. Human nature being what it is, one does not expect, nor does one find, much enthusiasm among State courts for the strict enforcement of the law.

Railroads have a vital stake in three aspects of the property tax: fair valuation; fair apportionment; and a fair application of rates. The first two involve difficult conceptual problems, but the last (with which this proposed legislation deals) is a matter of simple integrity. They should be allowed a remedy in a court that represents the national as opposed to a parochial interest.

I appreciate this opportunity to submit this statement to the committee.

Dr. Harold M. Groves is a native of Wisconsin. He is a graduate of the University of Wisconsin, where he received his Bachelor of Philosophy degree in 1919, his Master's in 1921, and his Doctor of Philosophy degree in 1927, and had a year of law at Harvard Law School. A professor of public finance, he was appointed to the University of Wisconsin staff in 1937 where he has remained except for an occasional mission in public affairs. During the early thirties he was successively State Assemblyman, State Tax Commissioner and State Senator. In 1940 he served as Chief of Staff for the United States Treasury's study of intergovernmental fiscal relations. In 1944-1946, he was on the staff of the Committee for Economic Development which published his study entitled "Post-War Taxation and Economic Progress." In 1948-1950, he was Chairman of the National Tax Association Committee on Corporate Income Taxation.

He has been on the Board of Directors of the National Bureau of Economic Research since the mid-thirties and was Chairman of the Board from 1961-1963. He was Vice President of the American Economic Association for a term in the late forties and has been President of the Mid-West Economic Association. One of his many books, "Financing Government" is now in its sixth edition. He served as President of the National Tax Association in 1963-64.

The CHAIRMAN. The next witness is Broley E. Travis, consulting valuation engineer, Sacramento, Calif.

Mr. Travis, we will be glad to hear from you.

STATEMENT OF BROLEY E. TRAVIS, CONSULTING VALUATION ENGINEER, SACRAMENTO, CALIF.

Mr. TRAVIS. Mr. Chairman and gentlemen, my name is Broley E. Travis. I am a consulting valuation engineer, and reside in Sacramento, Calif.

With your permission I will read my statement.

The CHAIRMAN. Yes, sir.

Mr. TRAVIS. Shortly after graduation from Washington State University in 1924 with a bachelor of science degree in engineering, I commenced my professional career as a valuation engineer as an assistant engineer with the Public Utilities Commission of the State of California. I spent the next 9 years with that body, making valuations of all types of utilities and railroads, for many purposes—ratemaking, sale, security issues, condemnation, et cetera. While with the Public Utilities Commission I participated in studies as to the tax burden of the utilities and railroads under the gross receipts tax, which was paid by these companies in California at the time, in relation to the amounts they would pay if they were subject to ad valorem taxation. As a result of the studies made at this time, the system of taxation for utilities and railroads was changed from a gross receipt tax to an ad valorem tax by constitutional amendment in 1933.

The California State Board of Equalization, which was given the duty of administration of the new law, formed a valuation division to assist it in this duty. I was offered and accepted a position with this new department as a senior valuation engineer. I continued with this department for the next 29 years, advancing successively to the positions of assistant chief of the division, and chief of the division, which latter position I retained for 12 years, until my retirement in 1962.

As chief of the valuation division I was in responsible charge of a staff of about 60 people, gathering and processing information leading to the valuation and equalization of the assessments of all the utilities and railroads in California. During my service with the Board of Equalization the assessment role of State-assessed property grew from about \$800 million to over \$4 billion. In 1962, this assessment roll included 36 railroads with a total assessment of \$345 million. While in State service I was loaned to the States of Oregon, Colorado, and New York to aid and advise them in their railroad assessment work. Many other States asked for our advice in their railroad and utility assessment work.

Since my retirement from State service in 1962, I have assisted the States of Utah, Idaho, and Nebraska in their work in connection with the valuation and equalization of railroads and utilities. I have recently been retained and am making a study in connection with State assessed properties for an interim tax study committee of the Idaho Legislature. In addition, I have participated in valuation and equalization cases for railroads in Missouri, Illinois, South Dakota, Iowa, and Ohio. I have also advised State-assessed taxpayers in regard to their assessments in California, Nevada, Arizona, Washington, Oregon, and Idaho.

I am very well aware of the tax discrimination against railroads due to the practice of assessing railroad property at percentages of full value much higher than most other property that is subject to the same tax rates. I have observed this type discrimination at one time or other in the States with which I have had personal dealings, and based on conversations with both railroad representatives and State tax administrators, I am convinced that the discrimination is widespread. This belief is supported by a mass of data in many reports and studies on the subject. Ratio studies made by taxpayer groups and also by ad-

ministrative and research organizations have all confirmed the claim of the railroads that they are being subjected to gross discrimination in the field of ad valorem taxation.

One of the first authoritative reports that confirmed what the railroad industry has been contending for many years was the report on carrier taxation, made by the Board of Investigation and Research and published in 1945, as House Document No. 160 of the 69th Congress. This very complete report on carrier taxation stated, in commenting on the lack of equalization in assessments of railroad property: "The officials of approximately half the States readily concede that railroads are being overtaxed because of inadequate equalization."

The discrimination in the assessment of railroad property has been more readily identifiable since the adoption of central assessment of such property. This discrimination has become more pronounced in recent years, due in a large degree to the rapid increase in the value of property locally assessed, where the local assessor has not kept up with such increases in his assessments; whereas the property of railroads has, on the whole, decreased in value due to economic reasons and the central assessing agency has kept railroad values high, while at the same time failing to give them the decrease in the assessment ratio of locally assessed property in the making of railroad assessments.

The Bureau of Census reports of 1957 and 1962 gave the first factual data as to the level of assessments in a great many States. The data confirmed the fact that the assessment ratios in nearly all States had been gradually getting lower each year. This fact had been found to be true in previous years in studies made in a relatively few States by legislative committees and taxpayer organizations.

The Doyle report, so-called after Maj. Gen. John F. Doyle, Director of the Special Study Group on Transportation Policies in the United States, created by Senate Resolutions 29, 151, and 244 of the 86th Congress, in 1960 found that State and local assessment procedures discriminated against railroads. In fact the report said so in very strong language—

... that there is a studied and deliberate practice of assessing railroad property at a proportion of full value substantially higher than other property subject to the same tax rates.

In June 1963, there was published a report of the Advisory Commission on Intergovernmental Relations on "The Role of the States in Strengthening the Property Tax." This report confirmed the findings of previous groups which had studied the problem, to the effect that the railroads were being discriminated against in the matter of ad valorem assessments.

If a person were to be guided by a reading of State constitutional and statutory provisions, he would not expect to find such a degree of discrimination in railroad assessments. Railroad property is usually assessed by a State assessing agency, as is the property of nontransportation utilities, while all other property is generally assessed by county assessors. Property of both kinds is subject to local property taxes at the same tax rate. In most States the constitutional and statutory provisions require that property taxation shall be uniform and equal, that State-assessed property assessments shall be equalized with local

property assessments by the State assessing agency, and that both types of assessment shall be at full market value. The record shows that there has been a disregard of these obviously fair requirements by many State assessing agencies. Although in most States today property is not assessed at full market value, the property of railroads is assessed at a much higher percent of market value than other property which is assessed by local assessors. Why, then, is there this unfair discrimination against the railroads? The discrimination stems from several factors, but the most important one is the political pressure on the State assessing agency to maintain the status quo in the face of ever-increasing governmental costs and tax needs.

The railroads have for many years attempted to obtain relief at the administrative level, but the results have been very disappointing, for the reason stated above—that the State officials are reluctant to change their procedures because to do so would be politically inexpedient. During the past decade the administrators have been made aware, through their own organizations, such as the National Association of Tax Administrators, of the fact that they should get their houses in order and attempt to make their assessments with more regard to equity for the railroads both as to valuation and to equalized assessments. The National Association of Tax Administrators had a competent committee work for several years developing standards for the finding of full value of properties of railroads and utilities. Their report entitled "Appraisal of Railroad and Other Public Utility Property for Ad Valorem Tax Purposes" is recognized as an authoritative guide for tax administrators. Committees of the National Tax Association and National Association of Tax Administrators have recommended methods to be used to determine the assessment level of locally assessed property. By the use of the valuation report and the methods recommended for determination of assessment ratios the State administrators have tools by which they could make large strides toward ending the discrimination in railroad assessments. Unfortunately too few States have seen fit to attempt any changes in their procedures that would result in a reduction of railroad assessments.

Although some measure of relief has been obtained by the taxpaying railroads in the State courts, the results of such action have been very discouraging. Dockets in the State courts are congested, and the courts are slow to move. In addition, the State courts are very reluctant to overturn the action of the assessing body, and they exert every effort to sustain the tax administrators. In most cases there is not a full trial before the State court, but only a review of the record made before the administrative body. As it is, the hope of the complaining railroad that the relief desired may be obtained from the State assessing body, the record made before that agency is usually quite sketchy; this is so because if the taxpayer should indicate that an appeal was likely by making a complete record, the assessing agency would not be in a mood to grant any relief. Also, in many States the railroads do not have recourse to the courts to the extent that the assessing body is made a party to the proceeding, but instead must bring suit against the tax-collecting body, such as the county, protesting the excessive taxes as a result of the discrimination in the assessment of the railroad property. This means that suit must be brought in every county of the State in which the railroad has property, which is a very time-consuming and expensive procedure.

I believe the evidence is irrefutable that there exists in a great many States clear evidence of discrimination against the railroads in the way their property is assessed. The movement toward granting the railroads relief against such tax discrimination has been very slow, and in many States the movement has been so slight that it is practically imperceptible. As the State administrative bodies refuse to fulfill their duties as public servants, and they are supported in this action by the State courts, it becomes evident that the only way the railroads can be freed of this tax discrimination is by having recourse to the Federal courts, as set out in S. 927.

The Advisory Commission on Governmental Affairs in its report of June 1963, recognizing need for improvement in the assessing procedures in the various States, made a number of recommendations for State action to strengthen property tax administration. Subsequently, the committee drafted suggested property tax legislation for enactment in the various States. If the recommendations of the committee were carried out by the various States, it could well be that the tax discrimination problem would be substantially solved. It would be a very naive person, however, who would believe that final consideration of the Commission's recommendations could be obtained in less than a couple of decades.

The fear has been expressed by some State administrators that this proposed law, S. 927, would take away from the individual States the right to administer their own tax laws. Such a danger would exist only if the administrator should be negligent in performing his duty. Certainly, if the State assessing agency assesses railroad property at the same level as all other property, the railroad would not have a cause of action in the Federal court under this proposed law.

The State administrators may also say "We are improving our valuation and equalization procedures; just give us time to finish the job." Although it is true that some of the States have shown a measure of improvement over the last 30 years, there are many States that have made no real effort to do an efficient job in the assessment of railroad property. It would be very difficult to predict accurately how many years it might be before those States would achieve any measure of equality.

That completes my statement, Senator.

The CHAIRMAN. Senator Morton?

Senator MORTON. I have no questions, Mr. Chairman.

The CHAIRMAN. Senator Pearson?

Senator PEARSON. I was struck by the point you made about congested State courts, and seeking jurisdiction in the Federal courts. I rather imagine the dockets are just as crowded there.

Mr. TRAVIS. They could be.

The CHAIRMAN. May we have your views on the general principle which has been recognized as valid that there may be classification in some States pursuant to their constitutional authority. Take a State where there is a requirement for uniform and equal assessment and fixing of rates but there also is given the right in the constitution to classify.

What would be the result of the right to classify if this bill were adopted?

Mr. TRAVIS. I think, sir, you are asking a legal question of an engineer, but I will give you my impression.

My interpretation is that this bill would not permit classification of carrier property which had been discriminatory against the carrier.

The CHAIRMAN. That is, the classification would have to be on the basis of the character of the property rather than the ownership of it.

Mr. TRAVIS. I think that would be true.

The CHAIRMAN. It does seem to me that my questions have some reference to what I said earlier this morning. If you classify properties, say real, tangible personal property, intangible personal property, do you have a right to go further and divide any one of these three classifications into subdivision on the basis of ownership rather than on the basis of the characteristics of the property considered?

You need not comment on that. But that is what it looks like to me.

Thank you very much for your help, Mr. Travis.

Mr. TRAVIS. Thank you, Senator.

The chairman. The next witness is Paul H. Sanders, professor of law at Vanderbilt University.

STATEMENT OF PAUL H. SANDERS, PROFESSOR OF LAW, VANDERBILT UNIVERSITY, NASHVILLE, TENN.

Mr. SANDERS. Mr. Chairman, my name is Paul H. Sanders, professor of constitutional law at Vanderbilt University, Nashville, Tenn.

In 1965 Prof. Paul J. Hartman, Vanderbilt Law School, and I, prepared an opinion and memorandum relating to the topic "The power of Congress to prohibit discrimination in assessment of property of interstate carriers for State ad valorem taxes." It is my understanding that copies of that opinion and memorandum have been submitted and made a part of the record before this committee.

The CHAIRMAN. This study will be placed in the Subcommittee files.

Mr. SANDERS. I might also say that Professor Hartman, who teaches law on State and local taxation, and I, have prepared an article on this same topic that has been published in the May 1966 issue of the ICC Practitioners Journal, appearing at pages 654 to 700, volume 33, No. 8 of the ICC Practitioners Journal, the topic of that article being the same as the topic of our memorandum; namely, "The power of Congress to prohibit discrimination in assessment of property of interstate carriers for State ad valorem taxes."

I might just say that our conclusion as to the constitutional power of Congress to prevent discriminatory taxation practices with regard to these carriers was stated, and I will read briefly this concluding paragraph in this article. It makes a rather sweeping statement that—

The proposals for Congress to eliminate discriminatory assessment of interstate carriers are valid under the general principles applicable to the congressional exercise of the commerce power as well as under the more specific principles applicable to the regulation of interstate carriers and to the control of Congress over State taxation of interstate commerce. The broad sweep of congressional power enunciated in the many Supreme Court decisions—have been examined in detail in this more lengthy document—leave little room for question. In fact, it can be stated flatly there is no authority that lends any substantial support to the proposition that Congress would lack power to enact legislation prohibiting discrimination in tax assessment of interstate carriers.

That is the end of the quotation from the article in ICC Practitioners Journal.

Senator PEARSON. Professor, would your principle be the same in those States that have constitutional provisions for classification of property subject to taxation?

Mr. SANDERS. Our statement here talks about the power of Congress to require that there be nondiscriminatory assessments. And this bill, which is now pending—S. 927—makes more clear, power to impose discriminatory tax rates. Our opinion after examining this bill, S. 927, was to the effect that everything that we had said previously would be similarly applicable to discriminatory tax practices whether it was by way of discriminatory assessment or by way of discriminatory tax rates directed toward the interstate carrier, which is the subject of this legislation.

Answering your specific question, the matter of classification if it were, as has been stated here, a discriminatory classification, namely a singling out at a higher rate for the tax for the property of the interstate carrier, I think the answer would be that we would say as far as the power of Congress is concerned, Congress under Congress' power can eliminate that form of discrimination though under earlier decisions, the *Browning* decision, which has been referred to here, the Supreme Court said that a State didn't violate the Federal Constitution by having some classifications along that line. But the question of what the State could do without violating the Constitution—the U.S. Constitution I am talking about now—is not a measure of the power of Congress when it acts affirmatively under the Congress' power to relieve against discrimination of the carriers which are the special object of this concern.

Senator PEARSON. I am not bothered by those cases where there is no power to make classifications promptly. But my question is directed toward the situation where a State constitution authorizes the classification property for taxation purposes, but there is no discrimination within the class itself. Would this bill be constitutional in relation to railroad properties that come under the jurisdiction of the ICC?

Mr. SANDERS. This bill would be constitutional. I am saying that Congress has the power to eliminate a discriminatory classification system directed against the interstate carriers which are covered by this bill, even though that classification system might be written out in the constitution of the States precisely.

Do I make myself clear, that either discriminatory assessment practices, where the State constitution is silent on classification, or discriminatory tax rates directed against the property of these carriers at an executive level, as far as the power of Congress is concerned, Congress under the commerce power can relieve against such discriminatory practices, whether with benefit of the specific statute or constitution of the State or whether just a practice based upon how they happen to do it. Power of Congress, in other words, is supreme and all I am talking about is does Congress have the constitutional power to deal with such problems.

Senator PEARSON. I understand. You are very helpful. I think they would all be discriminatory. They all differ from classification to classification. But I don't want to take the time to pursue that.

Mr. SANDERS. Let me make it clear; I don't think there is any question generally but what States may indulge in certain types of

classification for tax purposes, and that such practices will very frequently, or maybe usually, be constitutional. That is, they will not be invalid by reason of what we call the negative implications of the commerce clause, or they will not be invalid by reason of the equal protection clause of the 14th amendment. A reasonable classification. You can treat one class different from another. But we are talking now about how much affirmative power does Congress have to reach into certain types of practices affecting the interstate carrier and relief against practices that are thought to be discriminatory. This is a different question.

The scope of the commerce power is, as I am sure all of you gentlemen know—

Senator PEARSON. This would take away the power of the States to classify railroads?

Mr. SANDERS. To classify it as a separate, and say we treat the property of the railroad as a separate class at this higher level of tax rate, that is correct. That is the way I understand the bill. And I am saying that if that is the way the bill is interpreted, that Congress has the power to pass such a bill.

Senator PEARSON. Could it also be interpreted that the rate the railroad shall pay will go back to the average or to the lowest rate?

Mr. SANDERS. Let me answer by saying no matter which one of those interpretations you might put upon the bill, I would still give my constitutional opinion as the same. Since I am really limiting myself to a statement of constitutional authority maybe I should stop right there. Others have said what the statute means. No matter how extreme you put the interpretation, I think Congress can go that far under the commerce power without, I would say, exceeding the cases that have already been upheld under the Transportation Act of 1920 as to what Congress may do to protect the interstate carrier.

The CHAIRMAN. Proceed, Mr. Sanders.

Mr. SANDERS. I believe, Mr. Chairman, as a matter of fact all I was going to add was that Professor Hartman and I had examined this new legislation and it was our opinion that for the reasons developed in detail that our opinion as to the validity of the proposed legislation was the same, and that there are no reasons—the minor incidental, rather immaterial changes between S. 927 and the legislation proposed in earlier sessions, is not such as to change our opinion of the power of Congress to provide this substantive law which creates this right, and also to provide a remedy in the Federal court.

I believe that completes my statement.

The CHAIRMAN. Senator Magnuson?

Senator MAGNUSON. I have no questions.

August 1965 was the date of your brief on this?

Mr. SANDERS. Yes, sir.

Senator MAGNUSON. Has there been any decision since then that would change your conclusions?

Mr. SANDERS. So far as the Supreme Court of the United States or any other opinions, I have seen nothing which would make any difference. I might say the later Supreme Court cases dealing with the powers of Congress have all been in the direction of enlarging the power. And I don't believe there are any which have a direct bearing on this particular power.

Senator MAGNUSON. Thank you.

The CHAIRMAN. Senator Morton?

Senator MORTON. Your brief of August 2, 1965, dealt with H.R. 4972, and other companion bills introduced from time to time in the House of Representatives?

Mr. SANDERS. Yes, sir.

Senator MORTON. Do you have before you a copy of S. 927?

Mr. SANDERS. Yes, I do.

Senator MORTON. As I reread H.R. 4972 and compare it with S. 927 of this Congress, the significant change is subsection *c* on page 2 of S. 927, line 16:

The collection of any ad valorem property tax on such transportation property at a tax rate higher than tax rates applicable to any other property in the taxing district.

The bill to which you directed your brief deals with assessment primarily?

Mr. SANDERS. That was the emphasis, the matter of discriminatory assessment. Actually, I believe that the matter of collection of the tax was involved in that previous bill as well.

In this you are correct, this subsection *c* makes very clear that the rate is now to be invalid, too, if it is a discriminatory rate as far as the interstate carrier is concerned.

Senator MORTON. The basic difference between the two bills is that the emphasis of the House bill of a couple of years ago was on discriminatory assessment; the implication of a discriminatory tax, whether through rate or assessment. In this bill it has been spelled out so that it deals clearly with both discriminatory assessment and collection of a tax as a result of a discriminatory rate?

Mr. SANDERS. That is correct. It is our opinion that the constitutional undergirding for doing something about these things is essentially the same. In other words, you don't get any additional constitutional problems when you move from one to the other.

Senator MORTON. I understand. I merely wanted to see that the record was clarified in that connection. Thank you.

The CHAIRMAN. Professor Sanders, I understand your position to be that the Congress under the commerce clause has the power and authority to pass a law which will prohibit the State from practicing prejudicial discrimination either in the fixing of a tax rate or in the fixing of the valuation. Is that correct?

Mr. SANDERS. Yes, sir; that is correct.

The CHAIRMAN. And that that authority in the Congress exists whether the administrative officials are acting pursuant to a State constitution or a State statute?

Mr. SANDERS. That is correct. Or without benefit of either.

The CHAIRMAN. Thirdly, in your studies dealing with what factors should be considered when classification is made, have you found instances where it is said classification may be made on the basis of the character of the property but not on the basis of who owns the property?

Mr. SANDERS. I might say, Senator, that I am not primarily a student in the State and local tax field. I am in general constitutional law; is my field. I might say, however, that it would be my impression that some types of reasonable classification are almost inevitable in the

sense of types of property. The trouble we have here, we go back to that *Browning* case against N., C. & St. L. in which the matter of discriminatory assessment was raised before the Supreme Court of the United States, and the Supreme Court of the United States indicated that—Mr. Frankfurter's opinion indicated that since it would have been possible to classify and impose a higher rate upon the railroad, why in effect they would sort of assume that had been done, therefore there was no discrimination under the 14th amendment by the discrimination in the assessment practices.

The problem you are presenting was not involved in that case. I think the short answer is that it would seem to me that if all real property, real estate was treated alike, and personal property was treated alike, from other types of things were treated alike, you wouldn't have any problem, and I doubt if you would have them under this statute. The question is, Do you take the character of the owner, and discriminate against him when that owner happens to be an interstate carrier? That is the type of distinction that appears to me.

The CHAIRMAN. I am merely thinking out loud in trying to analyze what is meant by classification. Is it classification of property, or is it classification of ownership?

Mr. SANDERS. Senator, if you look at the subject of classification you will find that every conceivable way of slicing the subject matter has taken place at times. There are types of classifications that we say have no rational basis underlying them, and those types of classifications are not constitutional bases of distinguished one from the other.

In other words, we say it is really not a classification, it is all the same. There isn't any rational basis for treating "A" different from "B" different from "C." Other types of classification there is a rational basis underlying it and it is permissible to treat one different from the other.

The CHAIRMAN. Are you prepared to express an opinion as to what this bill will do if adopted, dealing with the presently accepted right of the States to classify on the basis of ownership?

Mr. SANDERS. I think that it would not permit a classification on the basis of ownership to the detriment of the interstate carrier. The interstate carrier could not be treated more disadvantageously. There could not be a classification on that basis with a rate which was discriminatory against the carriers, that is, at a higher level. That would be my judgment.

My area is the question of the power of Congress to pass a bill in this area. I have no doubt about that. Assuming that it were to eliminate any power to classify on the basis of ownership, which is what I assume the statute—

The CHAIRMAN. There have been some recent decisions on subjects which I can't immediately recall, in which the Supreme Court has held that whether an act is authorized by a State constitution or by a State statute makes no difference concerning the ultimate judgment which the Court has with respect to the specific issue involved. Is that correct?

Mr. SANDERS. Right. This goes to the question of whether the State has acted. I think what you are talking about is whether the State has acted. The State can act, it can act on the basis of a practice. It can act on the basis of something in the Constitution. It can act on the basis of something in the statute, or an administrative regulation. It

may just be nothing more than the fact that this is what they are doing. And that is still the State, which is important under the 14th amendment. But again the question of the power of Congress, Congress can reach that State action which is discriminatory no matter how it is embodied, whether it is in a formal statute, formal constitution, or in a practice.

The CHAIRMAN. Looking to the decision of the Supreme Court in which it declared the principle of one man, one vote, it said that that decision was needed even though a constitution provided for the selection of two houses within a State, one on the basis of geographic composition and the other on the basis of population. Am I correct?

Mr. SANDERS. There is no question about that. That is, whatever the Constitution requires, the Constitution of the United States requires, it overrides State law under the supremacy clause of the Constitution, no matter what that State law may happen to be embodied in.

Let me make clear again that the affirmative power of Congress when it acts to do something, it can go much further than what the Constitution prohibits standing unaided by congressional legislation. But when Congress acts, and it acts within its power as under the commerce clause or some other basis of power, then under the supremacy clause of the Constitution anything to the contrary—and this is expressly stated in the Constitution—anything to the contrary in any State laws, constitutions or what not, those become invalid because they are in conflict with that which is supreme under the supremacy clause of the Constitution.

The CHAIRMAN. Is there any provision in the Constitution of the United States dealing with the requiring of uniformity and equality of tax imposition? I don't recall—

Mr. SANDERS. When Congress taxes there is a requirement—I should have brought the Constitution with me—there is a requirement about the—

Senator MAGNUSON. We have one around here some place.

Mr. SANDERS. If Congress passes a tax, there is a requirement of uniformity. This is stated very well. Intrinsic uniformity. It has to operate the same way in all sections of the country. This is the way the Congress acts. There isn't anything that I recall which is the other way around, that is in terms of what the States have to do in this connection.

The CHAIRMAN. That is all that I have. Any further questions?

Senator MORTON. On this constitutional problem, suppose that we carried it to this extreme—and Congress isn't about to do this—but suppose we passed a bill and it was signed into law, which denied to the States the power to tax those engaged in interstate commerce. Have we the power under the commerce clause to do that?

Mr. SANDERS. Maybe I should say I wish you hadn't asked me that question, Senator. My answer would be that I believe you do have that much constitutional authority. That is, and this goes back to the very beginning, I am not talking about recent cases. I am talking about the origins and early discussions of the scope of the power of Congress to promote and foster and protect interstate commerce, removing, relieving the burdens. That would mean you might have the kind of instrumentality to which you would want to give tax relief entirely. That has happened, and it has been related at times to the power of Congress.

Senator MORTON. I don't think this Congress will do that. We are too fond of our jobs.

Mr. SANDERS. I believe you will find in this somewhat lengthy memorandum some earlier cases in which this subject is touched upon.

Senator MORTON. Thank you.

Senator PEARSON. Professor, under your theory could we pass a bill similar to this, providing for nonclassification of public utilities doing business in interstate commerce?

Mr. SANDERS. I don't know that you can draw a distinction between businesses of that character and others engaging in interstate commerce. As far as power, the outer limit of the Congress' power, John Marshall said it is full, it is complete. If you take John Marshall, Chief Justice Marshall's statement, which our recent Supreme Court decision indicated is still good law, there just isn't much outer limit to the power except a political limitation which we need not elaborate upon.

Senator PEARSON. So your answer is in the affirmative?

Mr. SANDERS. Congress could. As a matter of fact, I believe it has already acted, hasn't it, to strike down certain types of State taxes affecting those engaging in interstate commerce. I believe that is true within the last several years.

Senator MAGNUSON. I think you would surely open up a possibility. I don't say that Congress would do this.

Mr. SANDERS. And I am not saying you should.

Senator MAGNUSON. A common carrier is a common carrier in broad terms, whether a railroad, truckline, pipeline, or utility if engaged in interstate commerce.

Mr. SANDERS. And you are really not concerned with getting to the outer limits. We are concerned with what has been the very core of interstate commerce.

The CHAIRMAN. May I say to you that you have impressed Senator Pearson very much. He told me that his father went to Vanderbilt.

Mr. SANDERS. Thank you very much.

The CHAIRMAN. Mr. Rolf A. Weil, president, Roosevelt University, Chicago, Ill.

You many proceed.

STATEMENT OF ROLF A. WEIL, PRESIDENT, ROOSEVELT UNIVERSITY, CHICAGO, ILL.

Mr. WEIL. Mr. Chairman, I am Rolf A. Weil, residing from Evanston, Ill.

I would like with your permission to paraphrase and summarize my statement which has been submitted, and then to answer any questions.

The CHAIRMAN. The statement will be fully printed in the record at this point.

(The statement follows:)

PREPARED STATEMENT OF DR. ROLF A. WEIL

My name is Rolf A. Weil. I am president of Roosevelt University. My professional field is economics with a specialty in public finance in which area I hold a doctorate from the University of Chicago. For about 25 years I have had a special interest in the field of property taxation and, more specifically, in property tax equalization. This academic interest resulted in my employment in 1944 as a research analyst for the Illinois Department of Revenue where, for a period of

two years, I was responsible for the determination of the levels of assessment for various taxing jurisdictions by the assessment ratio method. Throughout my teaching career I continued to work in this field. In 1951, the National Tax Journal published my study of property tax equalization in Illinois. Subsequently I have participated in and directed many assessment ratio studies for private industry and for governmental units. I am particularly pleased, therefore, to have been invited by the Association of American Railroads to appear before you today to express my views on S. 927 and more specifically on the subject of the feasibility of measuring discrimination in ad valorem taxation.

It can be stated unequivocally that among experts in the field of property tax administration there is consensus that the level of real estate assessments can be accurately determined by the assessment ratio method. There can always be small sampling errors, but if proper techniques are used, such statistical error is administratively insignificant. Many refinements in this method have been developed and confidence in the results has been general. Moreover, the method has been accepted in many court cases as the best approach to the determination of the level of assessment of locally assessed property. In a nutshell, the method consists of comparing the assessed value of property with the "full fair cash" value as determined by selling price or market appraisal of a large number of properties.

It is possible, therefore, to equalize property as between assessment jurisdictions at an agreed level fixed by statute, constitutional requirement, or administrative policy. In many States such equalization is carried out with various degrees of success, although the *de facto* equalization can be expected to take place at a level lower than that which was set as the objective. This results from the following influences:

1. An unwillingness to recognize the impact of inflation on values;
2. A desire to keep assessments lower and, therefore, to make tax rate and debt rate limits more restrictive;
3. Attempts to make it easier for local school districts to levy the qualifying rates necessary to get State equalization aid, etc.

It is my observation, and I am certain that other experts would concur, that equalization as between assessment jurisdictions probably never occurs at the "announced" or "prescribed" level.

Railroad operating property, by contrast, is usually centrally assessed by State agencies. Typically, they are better staffed and more sophisticated than local assessors' offices. They value railroad systems under the "unit rule", that is in their entirety, allocate by formula what they consider the "fair" portion of system value to a particular State, equalize the State assessment at the "announced" or "prescribed" level, and then distribute these valuations to the taxing units so that they can be "spread" for tax purposes. It is my contention, based on extensive observation, that whereas State agencies are in a position to equalize railroad property at the "required" level they never seem to be prepared to go as far in their equalization attempts where local property is concerned.

On occasions, I have heard the argument made, by those who defend present State assessment and equalization practices, that one cannot compare value as measured by selling prices of real estate with that produced by the well established techniques for railroad assessments. The proponents of this position dismiss the often obvious discrimination between the level of local real estate and railroad valuation levels on the grounds that railroads are rarely if ever sold and that, therefore, no accurate comparison of assessment levels can be made. Such a hypothesis is totally untenable for the following reasons:

1. It is an accepted principle of property tax administration that in determining the level of assessment, assessments are to be compared with the best possible measure of market value.
2. Where sales are not available, appraisals by the best available techniques must be used as an approximation to market value.
3. Where appraisals have been made on "unsold" properties in numerous studies, the results have usually corroborated the findings by the sales ratio method.
4. Highly refined techniques exist for measuring railroad values using such techniques as capitalizing railroad operating income, using the market values of stocks and bonds, and determining depreciated reproduction costs. These valuation methods certainly produce results which provide sufficiently accurate measures of value to make valid comparisons.

Another erroneous argument against measuring discrimination vis-a-vis railroad property by the assessment ratio method states that industrial or business

property may be underrepresented in sales ratio studies. This argument does not have validity if it is recognized that:

(a) Most States do not permit classification of property and that theoretically all real estate should be valued at the same level;

(b) where business property is differentially treated, it is at least as often underassessed as overassessed (especially where localities wish to attract or retain industry); and

(c) where assessors have classified property statistical weights can be used by the sales ratio method so that even if few industrial sales are recorded, they are nevertheless, given their "full weight" by the statistical techniques that are used.

In conclusion, let me state that I have been concerned with the equitable and efficient operation of the property tax for twenty-five years. This tax has been and will have to remain one of the main sources of State and local revenue. Indeed, a strong system of federalism, in which I firmly believe, is dependent on a productive and efficiently administered property tax system. Great inequity, which now exists, does not help, but rather hinders the effective use of this tax. Railroads have an obligation to pay their proper share of local taxes, but they must also have the right to effectively litigate against discriminatory treatment. Local assessing officials must not be permitted to shift the burden of taxation from the local to the corporate citizen. Such a shifting is based on short-sighted self-interest. In the long run, the impact of discrimination on the cost of doing business and subsequently on prices and rates of return, may interfere with an efficient allocation of the nation's resources and, therefore, with national as well as State-local welfare. My studies in several States, but especially in Illinois, indicate that the level of local assessments has been significantly below the level of railroad valuation as measured by the State agencies themselves. Moreover, I know that remedy in the State courts has often been slow and difficult. I recommend the passage, therefore, of S. 927 in the interest of better property tax administration as well as in the interest of a healthy interstate transportation system.

Mr. WEIL. My educational background is that of an economist. I hold a doctorate in that field from the University of Chicago. My specialty is in the field of public finance and more particularly in that State and local.

Subsequent to my formal education in this field I worked as research analyst for the Illinois Department of Revenue and there I was specifically charged with the responsibility of measuring the level of assessments for the assessment jurisdictions of the State of Illinois.

This measurement was accomplished through the assessment ratio method which I will briefly explain in a few moments, and was used for the purpose of equalizing property as between the various jurisdictions of the State. This method is a method now rather universally used throughout the Nation.

After leaving the State service I entered the field of teaching, specializing in the field of public finance, and continued my interest in the property tax field, carried on research on property tax matters and property tax equalization, and published in the *National Tax Journal* on this subject.

I am happy therefore to be able to be here today and to speak on behalf of S. 927. And more specifically with respect to the aspect of the feasibility of measuring discrimination in ad valorem taxation.

Let me elaborate for a few moments on the matter of the sales ratio method, and let me say unequivocally that the level of assessment can be quite accurately determined by statistical techniques. Of course there is a certain degree of statistical error which is minute and administratively insignificant. We can determine the level of assessment by jurisdictions, and by types of property, or properties classified. So we have a basis for comparing the level of assessment say on local

property and the level of assessments of railroad property or other types of utility property.

The ratio method basically assumes that we make a comparison between the assessed valuation of property and its full fair cash value. Ideally the full value of property is its market value. When property is sold this is the best measure of value. The marketplace is its own best judge.

However, if a market value is not available, other techniques can be used to approximate market value, particularly through appraisals.

Most States have attempted to equalize property as between jurisdictions and locally assessed properties and State assessed properties such as railroad and utility property. Such equalization is usually required by the constitution or by statute, or as a matter of administrative policy. The States have had various degrees of success in accomplishing equalization. But I think it is fair to say that *de facto* equalization practically never reaches the level which has been announced or which is the objective.

There are several reasons, several influences why this is not accomplished. The first of these, which has been particularly relevant in recent years, has been inflation. Price levels of real estate particularly have gone up quite steadily over the years. The practice of assessors typically, even if they take their jobs seriously and work diligently, is in most instances to copy the assessments from the books from the previous year or previous quadrennial, and to make adjustments in order to allow for additions of property and for demolitions. But on the basis of my experience—and I have been involved in property tax studies, both for Government and private industry in a number of States—the practice is quite common to leave assessments pretty much the same except for changes in the physical structures over long periods of time. And so even if you start out at a certain level, be that 80 percent, 50 percent, 100 percent, whatever the statute or constitutional provision provides, gradually the level sinks. It deteriorates as inflation proceeds.

A second influence that is at work is the fact that local assessors frequently have decided to keep valuations down. They have decided to keep valuations down because although their function is to equitably distribute assessments, they frequently feel an obligation to their constituency to keep taxes down, and it is commonly felt by the constituency that if they keep the assessment down the taxes are also kept down. Moreover, this is readily apparent. There is a way of keeping taxes down by keeping assessments down. If you keep assessments down and you wish to keep the same amount of taxes, your rates have to go up. But your rates are usually restricted by tax rate and debt rate limits incorporated in the statutes or the constitution.

Finally, third, there is a temptation to keep the local valuations down because if you keep the valuations down it is easier for school districts to reach the qualifying rate necessary in order to get State equalization aid for school purposes. And this is a way of getting more money from State sources as compared to local sources.

So all of these things combine to make the level of local assessments decline over time relative to the announced or the required level.

Now by contrast let us look at railroad valuations.

The railroads are typically centrally assessed by a department of revenue, or by a State board of equalization, by a State tax commis-

sion, or whatever the name of the appropriate State authority may be. This central assessment is done by typically a highly qualified staff, a much more sophisticated staff than is available to the ordinary local assessor.

Whereas the State agencies are in a position and willing to equalize railroad property at the required or statutory level, they rarely seem to be prepared to go that far in equalization of local property. And this is really the basis of discrimination to which the bill that you are now considering addresses itself.

Sometimes it has been said that you cannot really compare the level of assessment as determined by assessment-sales ratio studies, that you can't compare that with the value that has been put on railroads because railroads aren't sold; residential property is.

I would like to state that I consider this hypothesis untenable because you must make your comparison with the best possible measure of value. Admittedly the best possible measure in my judgment is the market, and it is sales. But where you don't have sales you can use appraisals, and in a number of studies that I have been involved in we have made appraisals on unsold property and compared the ratio of an assessment to appraisal of unsold property with the ratio of assessment, the selling prices, of sold property, and we have found that one form of evidence corroborates the other.

Finally, let me say that there is a rather refined technique for arriving at the value of a railroad under the unit rule whereby you value the system as a whole and you consider such factors as the value of the bonds and stocks, you capitalize the income of the railroad, and you use depreciated cost figures. Clearly, bonds and stock reflect the market value of a road. Clearly, capitalized income is an evidence of market value. So that we have got some fairly good techniques for arriving at the full value of railroad property, and comparisons can, I think, quite properly be made.

Another point that is sometimes made is that you cannot fairly compare the level of assessments determined by the ratio method with the level of assessment for railroad property because property closest to railroad property, business property, is not properly represented, so it is claimed, in the typical sales ratio studies because business property isn't sold as much as homes are, or farms.

I would say that this is also not a valid criticism because in the first place most States do not permit classification and, therefore, we must assume that all property is treated alike. But let us assume for the moment that it isn't all treated alike, even if the constitution requires uniformity. The evidence that I have seen over the years is that business property is just as often undervalued as it overvalued. After all, in many counties industry, which is an important taxpayer in the community, could move, and it is in the interest of the governmental authority to keep industry in the county. And so very often you find a very low valuation on some business property. Certainly you find this as often as you find evidence of overvaluation.

Finally, where classification is in existence, one can determine the level of assessment by a system of weighting; that is assigning to each category of property a weight reflecting its importance in that particular jurisdiction.

In conclusion, let me state that I have been concerned with the equitable and efficient operation of the property tax for well over 25 years.

This tax has been and will remain one of the main sources of State and local tax revenue. Indeed a strong system of federalism — and I very firmly believe in such a system — is dependent on a productive and efficiently administered property tax system. Great inequity, which now exists, does not help but rather hinders the effective use of the tax.

I think railroads have an obligation to pay their fair and proper share of local taxes. But they must also have the right to effectively litigate against discriminatory treatment.

Local assessing officials must not be permitted to shift the burden of taxation from the local to the corporate citizen. Such a shifting is based on shortsighted self-interest. In the long run the impact of discrimination on the cost of doing business and subsequently on prices and rates of return may interfere with an efficient allocation of the Nation's resources, and, therefore, with national as well as with State-local welfare.

My studies in several States, but especially in Illinois, indicate that the level of local assessment has been significantly below the level of railroad valuations as measured by the State agencies themselves. Moreover, I know that remedy in the State courts has often been slow and difficult. I recommend the passage, therefore, of S. 927 in the interest of better property tax administration as well as in the interest of a healthy interstate transportation system.

Thank you for permitting me to testify?

The CHAIRMAN. Senator Magnuson?

Senator MAGNUSON? I was going to ask Mr. Weil one question.

My State has a 40-mill real estate property tax limitation in the constitution. There have been several attempts to repeal it, but they have never been successful. That means that there is a limited source of taxation from real estate property. It could mean—I don't have the figures—because that means is limited, to get more out of the 40-mill levy. There have been times I suspect where the local assessments were kept down, but to pick up the difference because of the limitation the common carrier assessments may have been higher.

Mr. WEIL. That is exactly right.

Senator MAGNUSON. That happens as a matter of practice rather than legality.

Mr. WEIL. Senator, not only in the State of Washington, I am sure. I think this is a very common practice, even where you don't have an overall statewide limit. There is a tendency to get the railroad valuations up to whatever the stated or legislated level may be. In Illinois it is 100 percent, or was 100 percent. But to keep the local property at a lower level.

Senator MAGNUSON. In that case it may be apt to work somewhat in reverse. The 40-mill limit was intended to be the ceiling. But to get as much as you can within the ceiling, the assessment on common carriers may have gone up to pick that up.

Mr. WEIL. Right. The limits may have accentuated the discrimination.

Senator MAGNUSON. I have no further questions.

The CHAIRMAN. Senator Morton?

Senator MORTON. I have no questions.

The CHAIRMAN. What effect will the passage of this bill have on the presently recognized right of the States to classify property?

Mr. WEIL. I would say none. I think that there is nothing in this bill, as I see it, that prevents classification. I think the point that must be made here is that this bill, per se, simply provides an opportunity for the railroads to go into Federal court and to demonstrate that a classification discriminates unreasonable, as judged by the court, against the railroad.

Let me be more specific, and this is my opinion, and I may be wrong, but my judgment would be this: That if a State has a classification for real estate, say, and for tangible personal and intangible personal property, there would be nothing to prevent a State from having such classification, provided when it came to the railroads it would also classify the railroad valuation into these components, and actually the railroad is a conglomeration of different types of property. Part of it is real estate, and part of it is personal property, is it not? And so it seems to me there is nothing at all in this bill that would prevent that type of classification. The only thing it would prevent is a classification by ownership where you would simply say railroads are a classification different from real estate and personal property. But that can't be so. A railroad is real estate, or personal property as the case may be.

The CHAIRMAN. That is the distinction you would make, that it is the character of the property that should justify or not justify classification.

Mr. WEIL. That is right.

The CHAIRMAN. And not the character of the owner.

Mr. WEIL. Right. That is my position.

The CHAIRMAN. By that do you mean that this bill would prohibit the establishment of a classification known as utility ownership?

Mr. WEIL. I think the bill would not prohibit the establishment of any classification but it would have to be decided in court whether the classification was set up with the objective and the result of discrimination.

The CHAIRMAN. Let's assume we are now in court and the issue before the court was: Is there prejudicial discrimination?

What would be the basis of the court's rationalization in determining whether there was prejudicial discrimination? Would it be that the court would consider what formula of assessment was used in other classifications, compared to that used in the railroad classification?

You may answer the question generally.

How do you determine if classification is permissible? That means that the formula of assessment may be different, and the fixing of the rate may be different. How do you determine the discrimination then?

Mr. WEIL. Let me give an economist answer rather than a legal answer, because I, obviously, not being an attorney, do not know exactly how the court would reason in such a case.

If real estate in a certain State were assessed at 40 percent, and if personal property were assessed at 20 percent, and if railroad property were assessed under classification, and utility property, at 60 percent, I think the court would, if this bill were enacted into law, it would have to say that this is discriminatory. But if real estate is at 40 percent, personal property at 20, and the railroad valued at say 30 or 35 percent, then if I were sitting on the bench I would take a look

at that railroad valuation and I would try to determine to what extent is it real estate, to what extent it is personal property, and is the level of assessment reasonable in relationship to the level of assessment on other property in that State, that is on realty and personal property. I think in the final analysis the court will have to make a judgment on such a matter.

The CHAIRMAN. I think you have given about the best answer that possibly can be given on the subject. That is, you reaffirm then that classification would be permissible.

Mr. WEIL. Yes, sir.

The CHAIRMAN. But that in the fixing of the rate and making the assessment, even under classification it would have to be shown that the rate and the assessment was reasonable and fair when related to all of the rates and assessments in the different classifications. Except that the showing will have to be the other way around. Under this bill it is the taxpayer that in effect will have the burden of proof. That is a different subject.

Thank you very much.

Senator MAGNUSON. Could I ask a question along this line?

If a State classified property as common carrier property, would that in itself be still permissible under the bill.

Mr. WEIL. Right.

Senator MAGNUSON. If the tax rate was not discriminatory.

Mr. WEIL. That is correct.

Senator MAGNUSON. But if classifying property by common carrier classification would be the first step leading toward discrimination, then this bill would allow them to knock out both?

Mr. WEIL. It is only the act of discrimination itself that is dislegal. That is correct.

Senator MAGNUSON. I guess most States do have classifications. They have business property, rural property, rental property, they all have certain general classifications for administrative purposes.

Mr. WEIL. Excuse me, Senator. You are right, they do administratively. But as far as State law and State constitutions are concerned, most States do not permit the classification. They do it tacitly.

Senator MAGNUSON. If the fact they were so classified led to a discriminatory tax, then we could get at it.

Mr. WEIL. Yes, sir.

The CHAIRMAN. Mr. Weil, you shook me for a moment. When you discussed the subject No. 3 pointing out the weaknesses in local evaluations, and you said:

Attempts to make it easier for local school districts to levy the qualifying rates necessary to get State equalization aid.

I had headache after headache on that subject when I was Governor trying to get the local authorities to bring their valuation up to its true value. The argument was of course they kept their valuation low in order to qualify for State aid.

Mr. WEIL. I have been through this many times in Illinois.

Senator MAGNUSON. I think that happens in many cases.

Mr. WEIL. Yes, sir.

The CHAIRMAN. Thank you very much.

Mr. WEIL. Thank you, Senator.

The CHAIRMAN. Francis J. O'Rourke, attorney at law, representing the National Tax Equity Association, Inc.

**STATEMENT OF FRANCIS J. O'ROURKE, ATTORNEY AT LAW,
WASHINGTON, D.C.; ON BEHALF OF THE NATIONAL TAX
EQUALITY ASSOCIATION, INC.**

Mr. O'ROURKE. Mr. Chairman and members of the committee, my name is Francis J. O'Rourke. I am an attorney and member of the bar, with offices at 820 National Press Building, Washington, D.C. I appear for the National Tax Equality Association, Inc. This organization represents some 7,000 businessmen who seek remedies for inequitable taxation, particularly where such taxation affects American business.

For nearly 25 years NTEA has advocated and worked for tax equality, particularly in areas where discriminatory taxation prevents full and free business competition. As set forth in the association's charter, its purpose is "to conduct educational, scientific, and research activities relative to disparities in Federal and State tax statutes and other laws and regulations affecting business, and to disseminate such information and to urge the elimination of such disparities to members and to Federal and State governments."

In accordance with this declared purpose, the association has given particular attention to the need for tax equality for ordinary private businesses, and their cooperative competitors and for commercial banks and the mutual thrift institutions that compete with them. It has also sought full taxation of income arising from the unrelated business activities of tax-exempt organizations. Substantial progress along these lines was achieved in the Revenue Acts of 1950, 1951, and 1962. However, the association is concerned with the problems of tax inequality wherever they may exist. For that reason I wish to submit the following brief statement in support of S. 927.

For many decades the plight of common carriers, particularly the railroads, with respect to State and local taxation of their property has been widely recognized. In many instances, throughout the country, such property has long been assessed at a higher ratio of its true value than has been the property of other taxpayers in the same taxing districts.

It is not our intent here to discuss the origins of this adverse discrimination, except to suggest that often it may have been based on such considerations as mere expediency, a desire to maximize revenue with a minimum of political repercussions, and perhaps prejudice against a "foreign" corporate entity operating within the State.

However this may have been, the discrimination has continued on a broad scale. Attempts have been made to remove it through State boards of equalization and similar agencies as well as by provisions for judicial procedures, but in numerous States such measures have not solved the problem. State boards often have not been willing to bring about full equalization, and remedies in State courts have often been slow and involved. There appears to be a marked need for legislation that will provide a uniform means for obtaining relief from unwarranted tax discrimination in this area.

Elaborate studies that have been made indicate the extent of this overassessment and the magnitude of the burden it has placed on interstate commerce, particularly with regard to the railroads.

As far back as 1944, in a "Letter From Board of Investigation and Research Transmitting a Report on Carrier Taxation" (In House

Document No. 160, September 19, 1944, pp. 124-125) it was noted that "the officials of approximately half the States readily concede that railroads are being overtaxed because of inadequate equalization."

A study prepared by the Association of American Railroads to illustrate the overassessment situation in 1964 shows that excessive ad valorem taxes paid by the railroads in 20 of the States approximated \$75 million. This excess was 51 percent of their total ad valorem tax payments in those States that year.

A spokesman for the railroads has estimated that in a recent 6-year period "railroads have been overtaxed more than an estimated three-fourths of a billion dollars as a direct result of discriminatory assessments." (Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 89th Cong., second sess., on H.R. 4972, "Tax Assessments on Common Carrier Property," Mar. 1 and 2, 1966, pp. 12-13, and 24.)

Besides the inequity of this discrimination there is also a distorting economic effect. Taxes are a part of a carrier's costs, and excessive taxes increase those costs. Inevitably they must be shifted either through higher rates to the shippers and travelers who use the services of the overtaxed carrier or to the owners of the carrier through reduced earnings. Often the shifting is in both of these directions.

In any case, the competitive position of the carrier is weakened. Its ability to sustain its operating facilities with adequate earnings and its ability to obtain new capital for growth and modernization are impaired.

The transportation industry is a vital part of the Nation's economy. When an undue tax burden weighs upon some parts of it, the whole system's capacity to serve effectively at fair rates to its customers is to some extent reduced.

Moreover, where some segments of an industry are taxed more heavily than other segments, the resulting movement of resources away from the more heavily taxed and toward the more lightly taxed results in an artificial and unwarranted reallocation of resources for an arbitrary reason (excessive taxation) unrelated to the most productive use of resources. Thus the whole Nation is rendered somewhat poorer because of this discriminatory tax impediment.

A remedy has long been needed for the excessive taxation of common carriers wherever such taxation exists in the great multiplicity and confusion of assessing and taxing jurisdictions throughout the United States. We respectfully submit that S. 927 provides that remedy. Its enactment would permit the achievement of tax equality for an important part of the transportation industry that for far too long has been subject to inequitable and economically unsound tax discrimination.

That concludes my statement, Mr. Chairman.

THE CHAIRMAN. Senator Magnuson?

Senator MAGNUSON. I have no questions. I think Mr. O'Rourke states what the general problem has been. He has had some experience.

I do hope, though, that we not confine ourselves to the word "railroads" in all our testimony. Although this is a very important matter to the railroads, we are dealing with the whole common carrier system. The railroads have been in the stew for longer than most of the rest of them. So therefore we think of them more in this case. But there is a need to enact provisions for all regulated carriers. Do you agree?

Mr. O'ROURKE. Yes, sir.

Senator MAGNUSON. I will put my statement in the record following his statement to the committee.

The CHAIRMAN. It will be printed in the record.

There is a live quorum and I have no further questions.

Senator MAGNUSON. I have no further questions.

(Statement of Senator Magnuson follows:)

STATEMENT OF SENATOR WARREN G. MAGNUSON

Mr. Chairman. I am appearing as a witness this morning to urge early and favorable action on S. 927, which I introduced for myself and for Senators Bartlett, Brewster, Cotton, Griffin, Hart, Hartke, Morton, Moss, Prouty, and Scott.

S. 927 has both a substantive and a procedural aspect. First, it would amend the Interstate Commerce Act to declare unlawful, as an unreasonable and unjust discrimination against and an undue burden upon interstate commerce, a state or local tax assessment, collection or rate upon the transportation property of a common carrier at a level greater than on other property in the same taxing district.

The special study group on transportation policy of the Committee on Commerce found in its 1961 report that despite State laws requiring uniform tax treatment, common carriers, and especially railroads, are discriminated against as compared to other property taxpayers in the same jurisdiction due in large measure to outdated procedures for assessment of property.

The study group had this to say about anti-discrimination tax legislation such as S. 927:

"Passage by the Congress of such a bill would not change the substantive effect of the tax laws of the several States because, without known exception, all States, either by constitutional safeguard or legislative provision declare it to be State law that taxpayers within its jurisdiction should be taxed uniformly. The addition of a procedural remedy, by authorizing Federal courts to enjoin collection of discriminatory taxes against interstate carriers, is consistent with the obligation of Congress to regulate interstate commerce, required under the Federal Constitution and is thereby a proper and necessary action of the Congress."

I want to emphasize that S. 927 is intended to not interfere with the power of a state to assess and collect property taxes so long as common carriers are accorded equal tax treatment with other taxpayers. In the majority of States which grant equality of treatment to all taxpayers, passage of this bill would have no effect on state or local property tax assessments. Even in those states which could be affected, only after a carrier succeeds in proving in Court that is unlawfully being discriminated against in transportation property tax assessments would a change be required under the provisions of this bill.

I know the reluctance of many members to support Federal action in this field because of the belief that States and localities should be given every opportunity to correct their outdated procedures which result in discriminatory taxation of common carriers. Year after year goes by, however and discriminatory taxes on railroad property alone amount to over \$75 million per year. These discriminatory taxes also burden water carriers, oil pipelines, and common and contract motor carriers. I want to emphasize that S. 927 applies to taxes levied on all regulated carriers.

These discriminatory taxes are, of course, reflected in the cost of transportation of goods purchased by our Nation's consumers. Consumers in States which treat all taxpayers equally are doubly disadvantaged. They do not benefit from these discriminatory taxes, but the freight rates they pay reflect the cost of unjust taxes exacted by other states on railroads and other carriers.

There has long been a need for the remedy contained in S. 927. Since this problem was highlighted by the special study group on transportation policy in its 1961 report, it is estimated that over one-half billion dollars in discriminatory taxes have been assessed against the railroad industry alone. Unless federal action is taken these discriminatory tax practices will burden our transportation system for years to come. The amendment to the Interstate Commerce Act, contained in S. 927, will provide a remedy to eliminate discriminatory tax practices and thus improve our national transportation system.

I support S. 927, and hope the Subcommittee will achieve early passage.

The CHAIRMAN. We will recess until tomorrow morning at 9 o'clock to meet again in this room.

(Whereupon, at 11:41 p.m., the subcommittee was recessed, to reconvene at 9 a.m., Tuesday, August 8, 1967.)

Mr. Chairman, I am appearing as witness this morning to give testimony on the bill which I introduced for myself and for Senators Hart, Burke, Clinton, Stennis, Hart, Burke, Stennis, and

It has been a substantive and a procedural aspect. I think it would stand the Interstate Commerce Act to be more uniform, as an unworkable and unfair burden on a single and an undue burden upon interstate commerce. A single or best tax assessment, collection or rate upon the transportation property of a person carried at a level greater than on other property in the same taxing district.

The special study group on transportation property of the Committee on Commerce and Transportation in its 1964 report that despite some laws regarding uniform tax treatment, common carriers and especially railroads, are distinguished as being as compared to other property interests in the same jurisdiction the in large measure to establish procedures for assessment of property.

The study group had this to say about anti-discrimination tax legislation:

"The issue of the Congress of such a bill would not change the substantive effect of the law of the several States because without known exception all States either by constitutional amendment or legislative provision declare it to be State law that taxpayers within its jurisdiction should be taxed uniformly. The addition of a procedural remedy, by authorizing Federal courts to enjoin application of discriminatory taxes against interstate carriers is consistent with the obligation of Congress to require interstate commerce regulated under the Federal Constitution and is thereby a proper and necessary action of the Congress."

I want to emphasize that S. 927 is intended to not interfere with the power of a State to assess and collect property taxes so long as common carriers are accorded equal tax treatment with other taxpayers. In the history of States which grant equality of treatment to all taxpayers, passage of this bill would maintain effect on State or local property tax assessments. Even in those cases which would be affected, only after a carrier succeeds in proving in court that is unduly discriminatory against its transportation property tax assess-ment would a change be required under the provisions of this bill.

I know the technique of many members to support Federal action in this bill because of the belief that States and localities should be given every opportunity to correct their unduly discriminatory taxes in discriminatory taxes of common carriers. Your bill goes too far, however, and discriminatory taxes on railroad property alone amount to over \$17 million per year. These discriminatory taxes also burden other carriers of highway and common and contract motor carriers. I want to emphasize that S. 927 applies to taxes levied on all regulated carriers.

These discriminatory taxes are of course reflected in the cost of transportation of goods purchased by our Nation's consumers. Consumers in States which treat all taxpayers equally are doubly disadvantaged. They do not benefit from these discriminatory taxes, but the freight rates they pay reflect the cost of unjust taxes exacted by other States on railroads and other carriers.

There has been a need for the remedy contained in S. 927. Since this problem was established by the special study group on transportation property in its 1964 report, it is estimated that over one-half billion dollars in discriminatory taxes have been assessed against the railroad industry alone. I also indicate in my testimony that these discriminatory tax practices will burden interstate commerce and that the amendment to the Interstate Commerce Act contained in S. 927 will provide a remedy to eliminate discriminatory tax practices and thus improve our national transportation system.

I support S. 927 and hope the Subcommittee will achieve early passage.

DISCRIMINATORY TAXATION OF COMMON CARRIERS

TUESDAY, AUGUST 8, 1967

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE COMMITTEE ON COMMERCE,
Washington, D.C.

The subcommittee met at 9 a.m. in room 5110, New Senate Office Building, the Honorable Frank J. Lausche, chairman of the subcommittee, presiding.

The CHAIRMAN. The meeting will come to order.

This is a continued hearing before the Surface Transportation Committee on S. 927, a bill respecting alleged discriminatory taxation of common carrier property.

The first witness this morning is Paul J. Tierney, Vice Chairman of the Interstate Commerce Commission.

Mr. Tierney, proceed.

STATEMENT OF PAUL J. TIERNEY, VICE CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. TIERNEY. Thank you, Mr. Chairman.

I have a short statement which I would like to read, if I may, Mr. Chairman.

My name is Paul J. Tierney. I am the Vice Chairman of the Interstate Commerce Commission and have served in that capacity since January 1, 1967.

I appreciate this opportunity to testify on behalf of the Commission on S. 927, a bill to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes.

S. 927 adds a new paragraph, designated as section 25(a), to the Interstate Commerce Act.

Section 1 of this new provision declares that the following action by a State or any subdivision or agency thereof with respect to the taxation of the real or personal property of any common carrier subject to the Interstate Commerce Act shall constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and therefore be forbidden and unlawful:

(a) the assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property owned by or used by any

common carrier subject to this Act engaged in transportation of persons or property in interstate commerce at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the taxing district subject to a property tax levy bears to the true market value of all such other property;

(b) the collection of any tax on the portion of said assessment so declared to be unlawful; or

(c) the collection of any ad valorem property tax on such transportation property at a tax rate higher than tax rates applicable to any other property in the taxing district.

Although the provisions of this bill apply to common carriers of all modes subject to the Commission's jurisdiction, it is well recognized that the basic purpose of this legislation is to provide a solution to a longstanding and deeply rooted problem—the practice of many State or local government's taxing authorities setting inequitable and discriminatory assessments and tax levels on the property of the Nation's railroads.

The variety and extent of discriminatory treatment in the assessing and taxing of the railroad's properties by State and local governments is well documented in the Doyle report¹ which also suggested remedial legislation along the lines of S. 927 to alleviate this problem.

Although the Doyle report's discussion of this subject was directed to discriminatory State and local tax policies against the railroads because of their large private investment in taxable rights-of-way and other property, it is apparent that carriers of other modes which make use of publicly provided transportation facilities confront many of the same problems cf. *Alterman Transport Lines, Inc. v. Public Service Commission of Tennessee*, 259 F. Supp. 486 (M.D.D. Tenn. 1966), involving the issue of discriminatory property taxation against motor carriers.

In essence the provisions of section 1 are designed to put an end to the widespread practice of treating for tax purposes the property of common carriers on a different basis than other property in the same taxing district.

In describing the extent of discriminatory tax treatment by State and local governments, the Doyle report states that "despite State laws requiring uniform tax treatment, railroads and pipelines are discriminated against as compared to other property taxpayers in the same jurisdiction, due in large measure to outdated procedures (which are sometimes deliberately retained) for assessment of property," and went on to state that [the committee] had information "showing the extent of overpayment of railroad ad valorem taxes resulting from the assessment of railroad property at a percent of its value that is higher than the percent for the assessment of other taxpayer property is to the value of such other property"; and that "This confirmed the findings of this committee that there is a studied and deliberate practice of assessing railroad property at a proportion of full value substantially higher than other property subject to the same tax rates."

The Commission itself has had occasion to note in its report in the *Railroad Passenger Train Deficit* proceeding, 306 ICC 417, that the existence of inequitable State and local property assessments and tax policies has served to jeopardize the continued existence of essential rail passenger service and recommended that State and local govern-

¹ "National Transportation Policy," report prepared for the Committee on Interstate and Foreign Commerce, U.S. Senate, by the Special Study Group on Transportation Policies in the United States (1961), pp. 445-491.

ments take steps to effect a greater degree of equity with respect to the tax burdens imposed on railroad properties as compared to that borne by taxpayers generally.

It is our understanding that this bill will forbid discriminatory property taxation of common carrier property whether (1) such discrimination is expressly sanctioned by State law or constitutional provision, or (2) whether, despite existence of State laws or constitutional provisions requiring uniform property assessment of property and tax treatment, it is simply the administrative practice or custom to levy discriminatory levels of assessment or taxation.

In the years since the Doyle report's findings were published in 1961, several State courts, acting under their own State laws or constitutional provisions, and Federal district courts, acting under the "equal protection" clause of the 14th amendment of the Constitution, have voided discriminatory assessments and tax levies on common carrier property to the extent such practices were in conflict with the applicable State laws or constitutional provisions.

In this regard, see *Louisville and Nashville R. Co. v. Public Service Commission of Tennessee*, 249 F. Supp. 894 (M.D.D. Tenn. 1966); *People v. Belt Ry. Co. of Chicago*, 226 N.E. 2d 265 (1967) and cases cited therein. These decisions have not, as yet, touched upon the power of State or local authorities to levy discriminatory assessments or tax rates against common carriers where the express provisions of State law or a State constitution permit such discriminatory treatment.

This is most often accomplished by classifying common carrier property in a separate class from all other taxable property in the same district, a practice which has been approved by the Supreme Court in *Nashville, Chattanooga & St. L. Ry. v. Browning*, 310 U.S. 362 (1940) against a claim that such classification is violative of the "equal protection" clause of the 14th amendment.

We have briefly developed this historical background for two reasons. First, in the past, some doubts have been raised about the constitutional power of Congress to legislate on this matter under the Commerce clause of the Constitution, article I, section 8. Although the *Browning* case may stand for the proposition that judicial interference in State or local tax matters is somewhat questionable under the 14th amendment, nothing in this opinion suggests a limitation upon the plenary power of Congress to regulate interstate commerce if it chooses to do so as a matter of policy.

This matter is more fully developed in the Doyle report at pp. 446-74 and we fully concur in the analysis stated therein.

A second and more crucial point is that since the courts, and, in some cases, either the State legislatures or local taxing authorities have or are taking steps to alleviate unduly discriminatory tax burdens on common carriers, it might be contended that this legislation is unnecessary.

While a number of States have reformed their property taxing and assessment practices to insure a greater degree of equity in the treatment of common carriers and, in some cases, have exempted part or all of some railroad's properties to help maintain adequate passenger and freight service, this, in our judgment, does not lessen the need for legislation to provide a uniform declaration of national policy on this complex subject and uniform remedy available to all carriers in all States.

The second paragraph of the proposed new section 25a provides that the district courts in the United States shall have jurisdiction to issue writs of injunction as may be necessary to restrain any State or political subdivision from assessing property in violation of paragraph 1, notwithstanding the provisions of section 1341 of the Judicial Code (28 U.S.C. sec. 1341). It also provides that such jurisdiction to be conferred upon the district courts of the United States shall not be exclusive of that which any Federal or State court may otherwise have.

We are not in a position to comment on the problems of judicial administration that might be involved in the proposed legislation.

Consistent with our past recommendation in S. 2988, we suggest that S. 927 be amended to prevent a possible conflict with the present provisions of section 202(b) of the act, which provides, among other things, that "nothing in this part shall be construed to affect the powers of taxation of the several States * * *." This possible conflict could be resolved by inserting "notwithstanding the provisions of section 202(b)" at the beginning of proposed section 25a.

In conclusion, we strongly support the objectives of S. 927 since we feel that it would strengthen the national transportation system of eliminating inequitable tax burdens on common carriers.

Thank you, sir. If you have any questions, I would be delighted to attempt to answer them.

The CHAIRMAN. Mr. Tierney, you are here speaking in behalf of the Interstate Commerce Commission?

Mr. TIERNEY. That is correct, Mr. Chairman.

The CHAIRMAN. Can you tell the committee whether the opinion which you express has the unanimous support of the members of the committee?

Mr. TIERNEY. It does, sir.

The CHAIRMAN. To summarize the position of the Commission, then, is that there is in existence in some States a practice of making discriminatory adverse assessments of the value of property owned by railroads?

Mr. TIERNEY. That is correct, sir.

The CHAIRMAN. And also, in some places, discriminatory prejudicial fixing of rates of taxation?

Mr. TIERNEY. That is correct.

The CHAIRMAN. You mentioned the *Browning* case; *Nashville, Chattanooga & St. L. Ry. v. Browning*. In that case, decided in 1940, the issue brought before the Supreme Court was whether discriminatory imposition of taxes and prejudicially discriminatory assessment of value became—was valid under the laws of the United States when the State's constitution or statute allowed the classification of property.

Mr. TIERNEY. That is correct, sir.

The CHAIRMAN. And the Court said in that case, where classification is authorized, either by constitution or statute rates may vary with respect to the variously classified properties.

Mr. TIERNEY. That is my understanding, sir.

The CHAIRMAN. So at the present, we have the *Browning* case which declared that classification of property by a State for the purpose of imposing different rates of taxation and different percentages of valuation is valid.

Mr. TIERNEY. That is correct, sir.

The CHAIRMAN. Now, it is further your opinion that under the commerce clause which has been given interpretations of practically unlimited strength, that the subject of classification can be reached by the Congress in its exercise of the authority under the commerce clause of the United States?

Mr. TIERNEY. I believe so, sir.

The CHAIRMAN. What is your understanding of the limitation, if any, that is imposed upon Congress in passing legislation under the commerce clause? To what extent must interstate commerce be involved?

Mr. TIERNEY. That is a very good question.

The power to regulate commerce is quite broad, it has been construed by the Supreme Court as plenary and I think the Court would be reluctant to hold unlawful any exercise of that power under the commerce clause where there was any rational basis for it.

Legislation would be constitutional if it were needed either directly or indirectly for Congress to exercise its power, authority, and responsibility under the Constitution to regulate interstate commerce.

The CHAIRMAN. Well, I have heard the word "minimal" used. The quantity of interstate traffic required to bring a subject within the commerce clause had only to be minimal. Minimal means practically nothing, and I do not know what the professor from Vanderbilt will say on that, but the way he spoke yesterday he in effect used your word as plenary. I frankly wonder if there is any limitation on the Congress of the United States, under the recent interpretations given to the commerce clause about its right to act in business matters crossing State lines if there is a minimal quantity of traffic involved.

Senator MORTON. If the chairman will yield, the application of the minimum wage law, the Fair Labor Standards Act, has certainly gone to extremes in this, and has been upheld by the courts. A man gets all of his raw materials, to produce fertilizer, in intrastate commerce which in turn is used by a farmer who sells the ultimate crop in interstate commerce, therefore, the fertilizer plant is subject to the Fair Labor Standards Act under a court interpretation.

The CHAIRMAN. All right.

Now, Senator Hollings.

Senator HOLLINGS. No questions.

Senator MOSS. No questions, Mr. Chairman.

The CHAIRMAN. Do you have a tabulation, possibly, of the States where discriminatory practices are in existence?

Mr. TIERNEY. We do not, sir.

The CHAIRMAN. There was included in yesterday's presentation by Mr. Ogden, I think, a tabulation. I was wondering whether you had one. You do not have one?

Mr. TIERNEY. We do not, Mr. Chairman.

The CHAIRMAN. Is there anything further you desire to say, Mr. Tierney?

Mr. TIERNEY. Nothing, sir.

The CHAIRMAN. Thank you very much.

Mr. TIERNEY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Ogden, I understand you would like to present some supplemental material to what you said yesterday.

Mr. OGDEN. Yes, sir.

**FURTHER STATEMENT OF JAMES N. OGDEN, VICE PRESIDENT AND
GENERAL COUNSEL, GULF, MOBILE & OHIO RAILROAD CO.**

Mr. OGDEN. Mr. Chairman, this is quite brief, and in response only to what seemed to us to be some need for clarification of the carriers' position on the interpretation of subsection (c) of the act as it relates to classification and rates, and if I may, I would like to read it. It consists of about a page and a half.

The carriers recognize the right and need for a State to establish separate rates for different classes of property. As an example, real property might be taxed at 50 cents per \$100 of assessed value and tangible personalty at \$100 of assessed value.

The carriers do not contend by section (c) of S. 927 that all carrier property, both real and personal, should be assessed at the lower rate of 50 cents applicable to real property and do not believe any court would so rule. The carriers do object to, and would expect paragraph (c) to provide relief from, the levying of a 60-percent tax rate against carrier real property when the rate applied to real property of others was only 50 cents per \$100 of assessed value.

It has been suggested that the language of subsection (c) would prohibit traditional classification of property for rate purposes such as: One class to include all real property; another class for all tangible personal property; and still another class for all intangible property.

This is not our interpretation of the bill. As we understand the bill it is intended to apply to the above illustration so as to permit such classification provided carrier transportation real property is taxed at no higher rate than other real property; that carrier transportation personal property is taxed at no higher rate than other personal property; and that carrier transportation intangibles are taxed at no higher rate than other intangible property.

Furthermore, it is our understanding that subsection (c) of the bill is not intended to interfere with or restrict State action in extending total or partial exemption to property of any class, such as churches, charitable institutions, homesteads, and the like.

To clarify the language of the bill in this area the committee might consider the following as a substitute for subsection (c) of section 1,

(c) the collection of any ad valorem property tax on (1) carrier transportation real property at a tax rate higher than the tax rates applicable to other taxable real property in the same taxing district and for the same fiscal purpose; (2) carrier transportation personal property at a tax rate higher than the tax rates applicable to other taxable personal property in the same taxing district and for the same fiscal purpose; and (3) carrier transportation intangible property at a tax rate higher than the tax rates applicable to other taxable intangible property in the same taxing district and for the same fiscal purpose.

Mr. Chairman, thank you so much for permitting me to make that clarification.

Mr. CHAIRMAN. Senator Moss?

Senator MOSS. I think I have no questions. I think that certainly would clarify the question at between personal property in the mixing that may be inherent in this language.

The CHAIRMAN. This proposal, tentatively made, in effect would require classification to be on the basis of the character of the property and not on the basis of its ownership?

Mr. OGDEN. In testing its effect, its relationship to carriers; and it would not prohibit, as we understand it, the traditional exemptions, total or partial, that are extended, such as to the charitable institutions and homesteads and schools; things of that sort.

The CHAIRMAN. That is, you would return to the traditional classification of property which is real, personal—tangible personal and intangible personal.

Mr. OGDEN. That is right.

The CHAIRMAN. And in that extent, taxation could be made in rates uniform in each of the classifications?

Mr. OGDEN. Well, this particular statement, that I pointed out, Senator, was related only to subsection (c) that had to do with rates. But it is not needed, basically, in subsection (a) in relation to assessments because on assessments, Senator, the whole thing would average out.

There is an opportunity to average there, and it does not make—it really does not make any difference.

The CHAIRMAN. I see.

All right. Do you have any questions?

Thank you very much, Mr. Ogden.

Mr. OGDEN. Thank you, sir.

The CHAIRMAN. Mr. Goodfellow, president of the Association of American Railroads.

STATEMENT OF THOMAS M. GOODFELLOW, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. GOODFELLOW. Good morning, gentlemen.

My name is Thomas M. Goodfellow, and I am president of the Association of American Railroads. I am grateful for the opportunity to appear before this committee in support of Senate bill 927 and its objective of granting common carriers like railroads relief from State and local property tax overcharges.

As president of the association, I feel it is my duty to help remove any obstacles that tend to restrict the railroads from delivering the full benefits of their operations to the public. I also speak on behalf of the whole U.S. railroad industry—an indispensable national carrier that handles 43 percent of the freight traffic moving between our cities, including vital military movements—as well as much of the public mails and passenger travel.

I speak for an industry that employs over 700,000 people, spends up to \$4 billion a year as a customer of other American businesses and pays out hundreds of millions of dollars annually in taxes to help support government programs throughout the land.

It is about a most serious aspect of this role as taxpayer that I will address myself to today. I do so as a railroader who has spent more than 40 years in helping provide the public with safe and adequate transportation service. Most of this time was with the Pennsylvania Railroad—up until 1954 when I became head of the Long Island Railroad. I have been in my present role just since June 1—so I must confess I am still much closer to operating realities than to legislative problems. Perhaps, however, this could prove of even greater assistance to your deliberations.

I will not go into the details of S. 927 since you have already heard other witnesses discuss these.

I would like to put this bill into broader perspective and discuss briefly how it will help the railroad industry better serve the public and meet the sweeping transport challenges of America's future.

Summing up national growth trends, President Johnson has said that U.S. transport loads will probably double over the next 20 years. Where will we channel this expanded volume? On our crowded highways, in our congested airways, or over our half-used railroads?

Gentlemen, railroads are the one carrier that could take on these giant new loads, to the endless benefit of the whole Nation. Here is the one domestic carrier that can concentrate mammoth movements in limited spaces and move things with an efficiency that will become more vital to a nation worrying about dwindling national resources and its competitive position in world markets.

I am sure you know the story of the railroads' contributions to America's development and to national defense—in World War II, during Korea, the Cuban crisis, and now in Vietnam. What you may not know quite so well is what we're doing right now to reshape this first great industry to meet the people's needs of tomorrow.

I wish I could show you personally some of the dramatic, exciting changes being made in railroading—our complete changeover in motive power, the continuing mechanization of track and shopwork, the automation of yard operations, the expansion of centralized train control, our booming use of modern communications, and electronic computers.

I wish you could see some of our attractive new freight service, too: How piggybacking of truck trailers and containers on flatcars is catching on, shifting freight from roads to rails. How unit trains are multiplying, moving great volumes of coal and grain and other bulk goods at sharply reduced rates.

How our trilevel rackcars have brought 50 percent of new auto shipments back to trains.

How an entire generation of modern customer-oriented freight cars is better serving shippers everywhere.

There are other equally important parts of this revolution in railroading I wish time might allow for me to tell you about. How we're overhauling our pricing structure to save money for shippers and win new traffic.

How we're adapting old work practices to modern technology while shielding employees against the hardships of change.

These sweeping changes and improvements make up one of the greatest comeback stories in economic history. We're not out of the woods yet, but we have come a long way—despite some of the roughest obstacles imaginable, including some of the roughest competition in all of industry and some of the lowest profit rates in U.S. business.

This is why the tax equalization envisioned by this bill is so critically important. For while we have advanced far along the comeback trail, much more needs to be done before Americans can get the ultimate in service out of their continentwide railroads.

Railroads have scraped together and invested \$23 billion in a better transport plant during the past two decades. Last year alone, this industry denoted an alltime record of over \$2 billion to capital improve-

ments. We won't do nearly that well this year even though the need has by no means diminished. With traffic volume moving sideways and operating costs up, we simply do not have the financial ability.

The recently granted freight rate increase will be of enormous help to the industry, but not so much that it removes the necessity of eliminating the burden that flows from discriminatory taxation of their property.

Consider what the overpayment in taxes attributable to this cause could mean if applied to the purchase of needed railroad rolling stock. This source alone could provide the means for the purchase outright of some 8,000 freight cars per year. It would be especially meaningful to the financially poor railroads whose credit is badly strained and whose savings from correction of this inequity would be undiluted by any increase in income taxes, which is another way of pointing out that the inequity in the present situation is particularly vicious because its impact is most serve on the poorer railroads that pay no income tax.

In short, the railroad industry badly needs to be treated equally alongside other property owners in regard to property taxes. And furthermore, the public we serve will be the main beneficiary—and that includes just about everybody. In the final analysis, any policies that discriminate against and hurt this great national servant hurt the Nation itself no less.

So I urge you to act in the public interest as promptly as possible to grant relief from these unjustified tax practices—practices that have swollen our property tax bill by about 50 percent in recent years—bleeding this hard-hit industry since 1960 alone of over \$800 million that should far better have gone into clearing the track for better rail service.

Railroads want a real chance to help solve this Nation's growing transport problems. This bill opens up one area in which you in Congress can provide exactly this.

Thank you!

The CHAIRMAN. Thank you.

Senator Moss.

Senator Moss. This is a very excellent statement, Mr. Goodfellow, and I compliment you on its delivery.

I think it is simply a plea for equitable treatment, as I take it, and I do not know that I have any specific questions to put to you on it.

The CHAIRMAN. Senator Morton?

Senator MORTON. Welcome to the committee, sir. I think this is your first appearance since you have undertaken your responsibilities.

Certainly as an observer, I expect to see a good deal of you in my few remaining days in the Congress, if some of my friends have their way in Kentucky; but that remains to be seen. [Laughter.]

In summing up national growth trends you refer to a statement made by the President and you speak of our crowded highways, our congested airways, and our half used railroads. The only thing that separates me from my beloved colleague, the chairman of this hearing, is the Ohio River, and I just wanted you to know that the rivers of America are in a position to make some contribution, although I am very sympathetic to your statement. I think it is a great statement. [Laughter.]

But I've got a few barge line constituents, too. [Laughter.]

That is all, Mr. Chairman.

Senator HOLLINGS. I have no questions.

The CHAIRMAN. He brought up a very irritable subject about the Ohio River. We have boatmen on the northern shore of the Ohio, across from Kentucky, and those of Ohio who use the Ohio River with a boat, must pay a tax to the sovereign State of Kentucky to use this national river [Laughter.]

Senator MORTON. And it is the best dollar they ever spent. [Laughter.]

The CHAIRMAN. We welcome you to the committee, Mr. Goodfellow. This is your first appearance. Undoubtedly you will be coming here more, and I am sure the committee will be glad to hear what you have to say in the matters dealing with the railroads of our country.

Mr. GOODFELLOW. Thank you, and I look forward to returning.

The CHAIRMAN. Charles F. Conlon, executive secretary of the National Association of Tax Administrators.

Mr. Conlon.

**STATEMENT OF CHARLES F. CONLON, EXECUTIVE SECRETARY,
NATIONAL ASSOCIATION OF TAX ADMINISTRATORS, CHICAGO,
ILL.**

Mr. CONLON. My name is Charles Conlon. I am executive secretary of the National Association of Tax Administrators, Chicago, Ill.

The association is an organization that is composed of the tax and revenue departments of several States, strictly official authorization, and I have been asked on behalf of the 24 States that are set forth on the first page of my statement to present this statement on their behalf on S. 927, and since the comments of the State tax agencies on this bill would be more or less cumulative in nature, it was decided that it would serve the convenience of the committee best if all those States joined in a common statement. And these States are: Alabama, Arkansas, California, Idaho, Illinois, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, Ohio, Oregon, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

That, Mr. Chairman, includes two States, Iowa and Tennessee, which were not listed in the original statement. They have subsequently asked to join in. Also, as an indication of the extent—

Senator MORTON. Before you proceed, Mr. Conlon, I ask unanimous consent that a very short letter of two paragraphs from Mr. J. E. Luckett, of the Commonwealth of Kentucky, should fittingly be inserted at this point in the record. He merely states in this letter that you are speaking for the Commonwealth.

Mr. CONLON. Thank you, sir.

(The statement of Mr. Luckett follows:)

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF REVENUE,
Frankfort, August 4, 1967.

Senator THRUSTON B. MORTON,
*Old State Office Building,
Washington, D.C.*

DEAR SENATOR MORTON: The Kentucky Department of Revenue is informed that hearings have been scheduled August 7 and 8 on S. 927. Although a

representative from the department will not testify concerning the bill, Kentucky has joined with many other states in opposition to its enactment.

Kentucky's views will be substantially presented in the statement to be submitted by the National Association of Tax Administrators. Certainly, there is extensive record to demonstrate that taxpayers, including railroads, public service companies, and others, have adequate protection in the state courts against discrimination.

Sincerely,

J. E. LUCKETT,
Commissioner of Revenue.

Mr. CONLON. If I may, while I am here, Mr. Earl Berry of the tax division of the Arkansas Public Service Commission asked if I would introduce for the record this brief statement which he has prepared, also. And if I may, I would like to give it to the reporter.

(The statement of Mr. Berry follows:)

STATEMENT BY EARL BERRY, DIRECTOR, TAX DIVISION, ARKANSAS PUBLIC
SERVICE COMMISSION

The Tax Division of the Arkansas Public Service Commission is opposed to S. 927 on the following grounds:

1. Valuation for ad valorem tax purposes is a State function reserved to the various States. The federal courts should not have the right to intervene in this process except in extra-ordinary cases in which it is apparent that willful discrimination has been made. There are adequate remedies and protection in the various state courts and with the appellant rights to federal tax courts.

2. Such legislation with cases being heard in overloaded federal court dockets and the long delay resulting therefrom might, in effect, bankrupt small taxing units. Perhaps, 50% of the assessed valuation of some taxing units is represented by the assessed value of the surface transportation companies. Prolonged litigation of such companies in federal courts would withhold revenues from schools and other agencies of government.

3. Article 16, Section 5 of the Constitution of Arkansas provides that "no one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value." This is a constitutional guarantee, but this would not prohibit a surface transportation company from filing suit in federal court, charging discriminatory assessments and involved taxing authorities in endless litigation.

4. It would place the federal courts, charged with judicial procedures, in the administrative field of property valuation for ad valorem tax purposes. This is not a proper function of the judicial branch of government.

Mr. CONLON. Now, as I was saying, the interest of the tax departments in this bill are further evidenced by the resolution adopted by the tax administrators in its meeting recently in San Francisco, which is attached to this statement. The endorsement of their position by the Southern Association of Tax Administrators, executive committee, at a recent meeting in Charleston, July 12, and also, by the expression of local assessing officers, evidenced by the resolution of the International Association of Assessing Officers, adopted at its 32d conference last year, which opposed proposals that would provide a special remedy in the special courts to contest, and to enjoin alleged discriminatory property taxes assessments of common carrier property.

Now this statement set forth these general points at some length and I would like to comment upon a few of them, if I may.

Now I think at the outset I should like to say that the opposition expressed by the State tax agencies to this proposal is simply not for the sake of protest or of obstruction. I think there are some important principles here. There are some practical problems involved and I think some rather serious policy implications in this proposal.

Now as we see it the bill essentially has two propositions: One, that a special remedial procedure be provided for the purpose of contesting alleged discriminatory assessments, and secondly, this bill would lay down a substantive rule which would provide special standards to apply in respect to the assessment and taxation of carrier property, that carrier property which is subject to regulations by the ICC.

Now underlying these two proposals, one remedial, the other substantive, the alleged widespread of substantial discrimination that exists against carrier property for property tax purposes, and secondly, the fact that there is no effective remedy in the administrative agencies and courts of the several States.

I would like to make a few comments on this matter of the extent to which this discrimination exists, and also the fact of the discrimination. Now by and large it has been established by comparison with the census ratios of the assessed value of property to true value, studies which the census makes every 5 years.

Now I think there isn't any question as to properties that trade frequently, such as houses in real estate or that type. These assessment ratio studies do demonstrate the relationship on the assessed value of the true value of these properties, but I think if you assume that these assessment ratios are therefore characteristic also of the proportion of assessment of railroad property, you are making a rather big assumption.

The assumption here is that those railroad assessments are at the statutory or legal standard, whatever that might be. Thirty percent of value, or forty, or full cash value, whatever the laws of the State—whatever the laws of the State provide.

This, as I say, is a rather big assumption because in the cases of those properties that transfer readily and frequently, you do have a subjective standard. An objective standard, an objective standard is the standard of the market. But I think this isn't true with respect to railroad properties or other properties that are centrally assessed by an agency different from the one which assesses ordinary property.

I would like to point out that the Census Bureau recognizes this in its official reports. I have quoted the extract from the census report on page 6 of my statement, where it is explicitly stated that the census survey is limited to sales of real estate that are listed on local property tax rolls, and no study of the relation between assessed value and market worth has been obtained for State-assessed property, or even for locally assessed personal property.

Now the second point I would like to suggest to you, as bearing on the extent and the fact of this discrimination is the method that is commonly used to value common carrier properties and public utility properties or the types. The procedure is that known as the unit rule approach whereby you go to other evidences of value lacking the sale or the frequent sale of the type of property that you have to assess, so lacking these sales, you look at the income of the property and capitalize it and get an idea of its worth in that way. You look at the market value of all its stocks and securities and add them up, and get some idea of the appraisal of the securities market on the value of this property, and you may also look at the investment in this property.

Now, it is a fact that with respect to common carrier property, specifically railroad property, there is a great difference between the value you would arrive at by capitalizing income and the value you would arrive at by looking at the summary of stock and debt values in the financial market, and the cost of reproduction less depreciation, which is the commonly used basis for properties that sell rather frequently.

Now the effect in the railroad indicates, I think we must make note of the fact that there is what might be called a corporate deficit that exists, and this is taking into consideration by, in effect, reducing the importance of the investment element in the valuation process. Now this point has been pretty well made, I think——

The CHAIRMAN. Just one moment, Mr. Conlon.

Mr. CONLON. Yes, sir.

The CHAIRMAN. You are now speaking mainly of the technique of evaluating different types of property?

Mr. CONLON. Yes, sir.

The CHAIRMAN. What do you have to say about the situation as existed in Montgomery, Ala., where a law was adopted requiring that utility property be assessed at 40 percent of its value, against personal property at 30 percent, residential, commercial, and industrial at 25 percent, and farm property at 15 percent?

In this instance that I have just described there is no involvement of technique of appraising. The issue is the imposition of a tax evaluation that varied on the basis of the ownership of the property involved.

Mr. CONLON. Now is this a law? I am not aware that in any State utility property is classified for tax purposes differently than other type of property.

The CHAIRMAN. Well, we better get clear on that issue, because there are two questions that I have in mind. One, your analysis of how an expert would technically evaluate railroad property which infrequently is sold and therefore you have no specimens of market value as reflected by sales. We had a witness here yesterday who gave in effect what you have said, but what about the situation if there is specifically adopted a rule, or a statute, or a constitutional provision that property of railroads shall be evaluated at 40—no, property of utilities at 40 percent, personal property at 30 percent, residential, commercial, and industrial at 25 percent, and farmland at 15 percent? Now I wish you would speak to this particular issue as you understand it. I have had much contact with you, as you know.

Mr. CONLON. Yes, sir.

The CHAIRMAN. And I have great respect for your knowledge generally on this.

Mr. CONLON. Well, Senator, I think as far as I know now, this is a hypothetical question. There are proposals made to classify property, but so far as I know—of this type—so far as I know, none of them have been accepted. But to come to your question, if you ask me whether I think there are some legitimate legislative purposes in classifying public utility property, which is regulated property, differently from some other types of property, I would say that this is within the legislative domain, provided the constitution permits this to be done. I mean public utility property. We are not singling out carrier property, but public utility property as a class. I think this is perfectly within the legislative capability, as long as the constitution

does not have a uniformity clause which requires the legislature to act otherwise.

Now, as to the wisdom of that, I think it is another question altogether. But I would suggest to you that in this respect you have actually, in the State of Idaho in the 1965 legislative session, where after a public utility property holder were granted relief by the court in a discrimination case, the legislature turned around and proposed a classification system which in effect would treat public utility property separately from other types of property, the same kind of property owned by other persons, and this case went into court, and this year the supreme court of the State said it can't be done. The constitution says property must be taxed uniformly, and we respect that mandate, and they threw that law out.

The CHAIRMAN. Under what authority do certain States classify?

Mr. CONLON. Well, there are quite a few States that have the power, either under the existing constitution, or by the constitution as amended, to treat some kinds of property differently from others.

For example, homesteads in many States have an exemption of some thousand dollars of value. Veterans have exemptions. There have been a number of enactments in recent years whereby the legislature has said that property used for agricultural purposes may be only taxed on their value as farms, even though they may be near a city and have some potential subdivisional value that is not realizable at a particular time.

The CHAIRMAN. What is the constitutional provision in Idaho? Does it authorize classification?

Mr. CONLON. No, sir. As far as property generally is concerned it must be treated uniformly.

The CHAIRMAN. That is, all types of property?

Mr. CONLON. Yes, sir.

Senator CANNON. Would the chairman yield?

The CHAIRMAN. Yes.

Senator CANNON. Is the distinction, in the *Browning* case, is that the constitution of a taxing State must provide for taxing of different classifications of property?

Mr. CONLON. Well, Senator, I would suggest that the *Browning* case is not good law, and I am one—and I am sure there are very many who have never understood how this decision could be handed down. Now, as I understand in the *Browning* case, that even though the constitution of a State does not specifically provide for the classification of property if the State does it long enough, what is illegal, eventually assumes some area of legality, and there is no—the Federal courts are not vested with any power to set it aside.

Now, I think that decision had more to do with the particular problem we are faced here with today than anything else, because it came along right after the depression, and you know there were very serious property tax problems in those days, because this was a great source of both State and local revenue. Now we adopted sales taxes during the depression, raised a lot of additional money, but during the way the influence I think of this *Browning* case persisted and it went up until after the war when the *Hillsboro* case was decided by the Supreme Court, that it seemed to me, anyway, that the Supreme Court reiterated its former view expressed in the *Sioux City*

case, that a taxpayer was entitled to an effective remedy in the State courts, and State courts must give them that remedy.

Now, following that, in a whole series of States, where discrimination cases were brought, and the proof was there, this isn't only carrier property, or public utility property, this is discrimination that exists; for example, between residential property and business property, downtown property and suburban property, real estate and personal property. There are all these possible areas of discrimination where the property is assessed at a higher percentage of its value than that used for the assessment of other property.

Anyway, to make a long story short, I don't think there is any State where this question has been fairly presented in the last 15 years, and you have been able to demonstrate that the type of property you have has been discriminated against, that the courts will not give you a remedy. Now one exception is possibly the State of Montana where in one of these assessment discrimination cases the court said the taxpayer was entitled to no remedy, because he was treated equally with other members of his case. But with that exception, where the case has been made and discrimination has been established, the courts of the States have provided a remedy, and in some of these instances that has been a very drastic remedy because the court has maintained jurisdiction over the case and said we will watch to see that our mandate is carried out.

The CHAIRMAN. Now, restate your answer to the question. The *Browning* case, according to what you said, held that even though there wasn't a constitutional provision, if there was a long practice of classification, that it was valid?

Mr. CONLON. That is what it boils down to, I think, yes.

The CHAIRMAN. That is your—

Mr. CONLON. That is my view of it, and I foresee—if here is a constitutional provision permitting classification, then it would not be violative of any Federal constitutional guarantee.

Senator CANNON. The right to do wrong.

Mr. CONLON. That is about it.

Senator HOLLINGS. I apologize. I am going to have to leave.

Mr. Conlon, is it a proper inference that you have got 22 States, is it a proper inference that those who do not appear in opposition to this bill—have you contacted like, for example, South Carolina and they don't join in this statement of opposition?

Mr. CONLON. Well, no, I wouldn't say that, Senator. It may be that they would want to join in it later, or it may be that they would express themselves directly to you.

No, I couldn't say that.

Senator HOLLINGS. You haven't contacted them?

Mr. CONLON. Yes. I have informed them what is involved here, and about the bill.

Senator HOLLINGS. In fact, all the other states in the national association—it used to be the federation tax—all of them have been contacted about this bill, and these are the ones who have responded in opposition, is that right?

Mr. CONLON. Yes. These are the States that have asked to be registered in opposition to it, yes sir.

The CHAIRMAN. Are they members of the national association?

Mr. CONLON. Yes, sir.

The CHAIRMAN. Was there a resolution passed directing you to appear here?

Mr. CONLON. Well, the resolution was passed, taking a position on the proposed legislation, and I was asked to represent that.

The CHAIRMAN. And what was that resolution?

Mr. CONLON. The resolution on the——

Mr. CHAIRMAN. On the position——

Mr. CONLON. It is attached to the statement.

The CHAIRMAN. And that is to oppose the bill?

Mr. CONLON. Yes. May I read it?

The CHAIRMAN. Yes, surely.

Mr. CONLON (reading):

Whereas, legislation has been introduced into the U.S. Congress (H.R. 7205 and H.R. 431) which deals with the assessment of transportation property of common carriers, and more particularly the ratio of assessments of such property to the true market value of the property as compared to other property, and the tax rate applied to such properties as compared to the tax rates of other properties, and

Whereas, the several States have taken, and are taking, effective steps toward the equalization of property tax assessments of common carriers and other types of property; and

Whereas, the National Association of Tax Administrators has carefully reviewed these bills and is concerned with these proposals and their impact upon State and local administration of property taxes, and has concluded that such proposals, if enacted, would seriously jeopardize State and local authority to resolve tax problems at the local level, and State and local authority to classify property within the State; Now, therefore, be it

Resolved, That the National Association of Tax Administrators at its 35th annual meeting in San Francisco, Calif., held June 11-15, 1967, does hereby adopt a policy in opposition to the Federal legislation typified by H.R. 7205 and H.R. 431 and encouraging the States to take positive steps toward administrative and legislative solution to any existing problems in this area; and, be it further

Resolved, That the executive secretary of this association be directed to inform all congressional committees considering such legislation of the position of this association.¹

Senator HOLLINGS. Do any States favor it? Did you get a favorable response?

Mr. CONLON. A letter from the State of Colorado saying they were not interested in appearing. They had no objection to it. That is the only one, Mr. Hollings.

The CHAIRMAN. I might say that I have had several communications from Governors, which I have sent to Mr. Sender and I will put them in the record later.

Senator HOLLINGS. I am glad to see the witness. He helped me write a sales tax law some 17 years ago for the State of South Carolina. We had some apprehension about it, because a week before we submitted it the fellow who wrote the sales tax law for the State of Florida was shot down in the streets of Miami. But we submitted it anyway. We both survived, and I got my expert knowledge from the witness, Mr. Conlon.

Mr. CONLON. Thank you, Senator.

The CHAIRMAN. Mr. Conlon, do I understand you to say that you do not know of any State where by statute or by constitutional provision or by practice there is a mandate to evaluate properties on the basis of ownership at a different percentage of its true value?

¹ This resolution was unanimously adopted at the 35th annual conference of the National Association of Tax Administrators, San Francisco, June 11-15, 1967.

I am referring to the Alabama situation.

Mr. CONLON. Well, there has been a proposal made in Alabama, but so far as I know, this has not been—this would require a constitutional amendment in the State.

I think that the Supreme Court of Alabama has quite clearly said that under the present constitution, the rule of uniformity prevails, and to change that would require a constitutional amendment.

Now, there may be a proposal for a constitutional amendment to do this, but I do not know of any instance where public utility property by constitution or by statute is classified separately for tax purposes from other types of property.

The CHAIRMAN. That is the question Mr. Sender.

Mr. SENDER. According to the paper prepared by Mr. Ogden, and in his testimony, he advised the committee that in the concluding minutes of the regular session of the Kentucky General Assembly, there was a bill for 1966 and 1967 that will require the use of ad valorem tax rates against railroads and other public service companies different from those to be applied to property generally for the purpose of collecting from such public service companies the same or more revenue received from them during the 1965 tax years.

That followed the court decision.

Mr. CONLON. Yes.

Now, I will tell you my understanding of the situation for what it is worth.

Kentucky is a State where the court finally said you must obey the constitution—to assessors—you must obey the constitution and statute of this State.

The State calls for the assessment of all property at full cash value. We will have no more fractional assessment. We will maintain jurisdiction of this proceeding in order to see that this mandate is carried out.

Now, to the extent that some types of properties were assessed at a higher proportion of their true value of other types of properties, this would mean some reapportionment of tax burdens among different types of taxpayers.

Utilities would be one of these groups, owners of particular types of commercial or industrial property, perhaps another, and this redistribution of tax burdens overnight would have been, I think, a tremendous blow for local communities to take.

So my understanding is that the court—that the legislature in Kentucky said that for the purpose of this 2-year transitional period, the public utility companies will pay taxes in total amount, the same as they had in the period before the court's mandate.

Now, I understand this was strictly transitional, and this is to aid in avoiding the tremendous repercussions that would be caused if overnight this sweeping change was made, and these sweeping redistributions were made.

The CHAIRMAN. Are there States now in which there are constitutional provisions for classification in which the assessment of utility properties is higher than the assessment of other properties of the same type of properties, but in different classification?

Mr. CONLON. I do not know of any, sir.

The CHAIRMAN. Under this classification rule do you know of any States where the rate of tax imposed against utilities is greater than the rate of tax imposed against other citizens?

Mr. CONLON. No. I do not know of any situation like that.

Now, there are—there are properties, now, for example—

The CHAIRMAN. Now, let me ask you this: How does this discrimination come about, then, if it does not come through classification?

Mr. CONLON. Well, you are talking about—

The CHAIRMAN. The alleged discrimination.

Mr. CONLON. You are talking about the legal classification now. The discrimination as alleged to exist here comes about from de facto classification, which has no warrant in law, and that would consist of assessing a particular type of property at a higher ratio of its true value than other property.

The CHAIRMAN. That is the technical discussion of the assessment that produces the inequity rather than the law?

Mr. CONLON. Exactly.

The CHAIRMAN. All right. Go ahead.

Mr. CONLON. Now, I would like to just make one other point now about the sort of things that I think ought to be taken into consideration when you get your—when you are trying to demonstrate the existence of this type of discrimination, and that is you get back again to the type of value of procedures used for public utility property.

Now, I have a statement here of some length, excerpted, rather, from a paper by a former railroad assessor in the State of Illinois, Mr. Stiles, who points out that the use of the unit rule does have a practical effect here in that railroads in effect receive allowances in the normal course of assessments that allow de facto credits that are not available to other carrier properties.

What he has in mind, if you have an ordinary factory, and you put a million dollars into the building and you have 2 or 3 bad years, you do not make any money, the local assessor still assesses that property on the basis that he would apply to any other. Whereas Mr. Stiles points out that in the case of carriers, where you have what might be called this corporate deficit, this is in effect taken into account in coming to the appraised value of a railroad, and he says, and I quote from him, and I have this quotation on page 7, Mr. Chairman, this last paragraph here, where he concludes by saying these considerations would seem to merit recognition in any evaluation of the discrimination, and imperfections in the assessment equalization process are held to inflict on a rail carrier industry.

Now, this is just a point to be considered in appraising, as I say, the extent of this discrimination. I would like to make one other point here that I think throws some light on it. If you look back at the census of Government figures on the assessments of railroad property that are assessed by State agencies, you see that in 1956 they were \$6,500,000. This is the assessed value of railroad property for State taxes; \$6,500,000. In 1961, it was \$5.9 billion, down a substantial amount.

Now, the figures for the census of Government for 1967, which will have the 1966 figures, are not available yet, but judging from developments one sees, I think there is no doubt that these railroad assessments would not be higher than the \$5.9 billion that were on the books in 1961.

Now, here we have a comparison, \$6.5 billion in 1956, \$5.9 billion in 1961, and let's say \$6 billion today.

Now, in that period of time the Department of Commerce reports that railroad investment in new plant and equipment comes to \$13 billion. In other words, there has been \$13 billion new investment in plant and equipment on this period, and yet the assessed values of that railroad property are lower than they were in 1956, before the \$13 billion was put in.

Now, I know there is a lot of property retired, and that investment needs constantly to be made, but I think it is a point to be taken into consideration in appraising this general proposition that is substantial and widespread discrimination does exist merely on the basis of these assumptions about railroad values and the objective proof about the value of other types of property as established by the Census Bureau.

I think it raises some questions that the subcommittee has to consider. Now, I would like to pass now—I have mentioned in my opinion there is an adequate remedy, and I think this has been demonstrated in the States where the case for discrimination has been established—the courts have, with the single exception, I have noted, provided a remedy in these discrimination cases, and so the question is why have a special remedy if there is one already available in the State courts?

The other half of that question is: If you do not have a remedy in the State courts, I think that under existing Federal law, you can go into a Federal court and get relief. Now, I think this was done within the past year, a suit instituted by a railroad in the State of Tennessee in a Federal court, and a decree issued.

This case is still on appeal in the court of appeals, but jurisdiction was sustained, and I would like to point out, also, that in the past year or so there have been three proceedings in State courts where the claim of discrimination has been raised and established, and a remedy has been granted. And these three instances I have cited on the bottom of page 4 of my statement. They involve Alabama, Georgia, and Tennessee. So much now for this matter of the procedural rule which the bill would provide.

I would like to say a few words now—

The CHAIRMAN. What has been the usual situation that required the court to say that it could not give a remedy? What were the complications? Was it the difficulty of getting the proper party before the court? Why was no remedy available, if that—

Mr. CONLON. There was a tendency. I think—in my view it was this: There was a tendency on the part of the courts of the States in cases where a taxpayer asked for a remedy against the discriminatory assessment, and the assessment on his property was not up to the statutory standards, the court was inclined to say: You have no complaint because the law here says your property should be assessed at its full cash value, it is only assessed at 70 percent of its cash value, therefore your remedy is a political one. You must elect officials who will obey the laws and assess everybody's property according to the statute, and then you will have no difficulty. You will have no grievance.

The CHAIRMAN. What was the usual relief that was asked? Was it injunctive?

Mr. CONLON. No, the usual relief that was asked would be to reduce that assessment to the level that prevails on other types of properties. But the point I would like to make in this connection is that in the past 15 years, since the U.S. Supreme Court had insisted in the *Hillsboro* case that remission to a political remedy is not an adequate remedy. The courts themselves have said we will disregard the statutory mandate that property be assessed at its full value and give you relief on the basis of the difference between the assessment of your property, and the assessment level applied to other property, but you must establish, as a matter of fact, that this discrimination exists.

Senator MAGNUSON. Even though other assessments are lower?

Mr. CONLON. You were given relief on the basis of the lower assessments, yes.

Senator MAGNUSON. If this is true, isn't it true that you should have a more simple procedure like this bill?

Mr. CONLON. Well, Mr. Chairman, I think the bill——

Senator MAGNUSON. I don't know. I am just asking.

Mr. CONLON. I think the procedure provided in the bill insofar as the formalities of degree of proof to establish a case would be no different in the district court——

Senator MAGNUSON. You are suggesting that the Federal courts would hold the same way as the State courts, then?

Mr. CONLON. I think they would require the same amount of proof——

Senator MAGNUSON. But even though a common carrier is not assessed at the statutory rate, therefore, you have no relief in court for that reason?

Mr. CONLON. Oh, no, the Supreme Court has very clearly said that this is not an effective remedy, and the point in my discussion here is that the States have also adopted this view of the situation. They will disregard the fact today that the assessment has not been made up to the statutory level, and say that if you are assessed at a higher percentage of value than other taxpayers generally, then you are entitled to relief on the basis of the difference between the two of them.

Senator MAGNUSON. The State courts now have adopted that?

Mr. CONLON. Yes, sir.

Senator MAGNUSON. It took them quite a while to get to that point, did it not?

Mr. CONLON. Yes.

Senator MAGNUSON. Well, so much for the subject of remedies, is that right?

Mr. CONLON. Yes, sir.

Let's go now——

Senator MAGNUSON. I do not think some States have got to it yet, but maybe some of them——

Mr. CONLON. Well, Senator, in any case, I think I said a little before you came in, I don't know of any situation except in one where when this kind of a case has been established relief has not been forthcoming. The courts are assuming a great responsibility here in requiring that uniformity be the keynote rather than compliance with the statutory standard of value.

Senator MAGNUSON. Well, of course, they would have to prove discrimination in other cases, but it seemed to me that if my property, whether I am a common carrier or individual owner, or business

owner, if I am assessed more than the prevailing rates for comparable property, that that would be discrimination per se?

Mr. CONLON. That is right. And you are entitled to a remedy, and the State courts grant it.

The second proposal in the bill is that that which provides a substantive standard by which the property tax assessments applicable to ICC carriers would be judged.

The CHAIRMAN. What page are you on?

Mr. CONLON. Well, I am not on any page particularly. I am going to talk about the material under the heading "Impact of the bill on State power to classify property for tax purposes."

The CHAIRMAN. All right, proceed.

Mr. CONLON. I think what you will have here is a standard provided by which discrimination would be defined as applied to ICC carriers here.

In other words, I think the Congress would be laying down a more or less guideline that would apply to ICC carriers alone, even though that standard might differ from the one in effect in a particular State. I think without question or principle here, after all a railroad, or other type of carrier that is subject to ICC regulation—it is not a Federal agency, where Congress has acted to lay down the rules about taxation or exemption or immunity for example in the case of a Federal Reserve bank, or the RFC. Perhaps the closest analogy you would have to that situation would be revised statute where Congress says how national banks shall be taxed.

Now, these are privately owned institutions. They are about the only analogy I can think of where Congress has laid down some sort of a guideline or standard according to which State and local taxes may be levied.

There was more reason, I think, during the old days, with respect to national banks, because they did have power too from that standpoint.

Now, the specific provision here, I think the objective, I think the chairman has stated it of this bill, is to see that the common carrier property gets equal treatment with other taxpayers.

Now, the question is what equal treatment within the meaning of the bill? In the strict uniformity States, where all property must be assessed on the same basis of value and taxed at the same rates, I suggest that the carrier is protected by the remedy that is presently available in the courts of the States. But it is a fact that most States are special treatment of one type or another to different types of property.

They have departed from it in a number of respects by according special treatment of one type of another to different types of property.

I will suggest a few of them. For example, homesteads. In certain States a dollar value of a person's residence is exempt from tax. Timber is assessed on a different basis in some jurisdictions from other types of property, or property generally. There are in many States now special provisions with respect—

Senator MAGNUSON. When you get to timber, now, timber was assessed under a different formula, and it still is, although there is more of a tendency to equalize it now, but it was done by the State legislature, picking out this particular raw material as sort of an incentive piece of taxation, but in those cases the legislatures picked this particular group out.

Mr. CONLON. That is right.

Senator MAGNUSON. And gave them some tax relief.

Mr. CONLON. That is right.

Senator MARNUSON. To encourage the permanent holding of timber rather than constant resale.

Mr. CONLON. That is right.

Senator MAGNUSON. But if the legislature had done the reverse and picked timber out for more taxation, that would have been declared unconstitutional.

Mr. CONLON. I agree. And if it picked a carrier out for more—if it picked a carrier out for more taxes, that probably would be true, too.

Senator MAGNUSON. When you classify by ownership, you sort of pick them out for picking. [Laughter.]

Mr. CONLON. I think—

Senator MAGNUSON. These are legal problems.

Mr. CONLON. Well, anyway, we go on. What you say it true. There have been perfectly good reasons for legislative action in deciding to say, for example, we are not going to assess the growth of trees every year.

The CHAIRMAN. Well, how did the legislature get by with that operation if there was a constitutional provision that all properties must be uniformly and equally assessed and taxed?

Mr. CONLON. Because the constitutions have been amended to make provisions for these special treatments.

The CHAIRMAN. That is the constitution providing for class—

Mr. CONLON. This is a case-by-case basis.

The CHAIRMAN. The basis, however, is that there was constitutional authority of one kind or another to do the specific act?

Mr. CONLON. Yes, sir.

The CHAIRMAN. But in the absence of a constitutional provision it could not be done?

Mr. CONLON. That is right. You take, for example—

Senator MAGNUSON. But right there, even then, it kept a lot of lawyers busy for years?

Mr. CONLON. That is right. You take for example, the case of a farm, a few miles from a growing city. Now, for subdivision purposes, that property is very valuable. If it is used strictly for farming, it is not so valuable. The legislature has been desirous of saying it is our policy to keep this land in farming purposes, and in order to do so, we will lay down the rule that it is to be assessed for property tax purposes at no more than its value for a farm, and in order to carry that policy out, it has been necessary in a number of these jurisdictions to amend the constitution to permit this to be done.

A departure from the uniformity rule.

The CHAIRMAN. Now, you started reading, under the heading "Impact of the bill on State power to classify property for tax purposes"—

Mr. CONLON. I am coming to that.

The CHAIRMAN. Maybe if you would read we could follow the arguments better.

Mr. CONLON. Now, the bill in section (a), it says it shall be an unjust discrimination. The assessment of property for purposes of property tax levied by any tax for transportation property at a value

which bears a higher ratio to the true value of such transportation property than the assessed value of all other property in the taxing district subject to a property tax bears to the true market value of all such other property.

Now, I am not clear exactly as to what this means, how this would be interpreted, I think probably it would be interpreted to mean that the assessment on a carrier could not exceed the percentage of its value that is effectively assessed against all other type of property that are subject to a property tax assessment in that district, so that if you had some homestead property, and you had some timber property, and you had some agricultural property, you had some veterans property, you had some old-age property that was in fact assessed at a lower percentage of its actual value than the railroad property, then this would have to be taken into consideration in computing some sort of an effective level above when the railroad assessment or the carrier assessment could not go.

Now, this means in effect that a carrier would have a reduction in its assessment for purposes that were completely unrelated to the legislative purpose in making these preferential treatments, the assessment ratio, or what have you, for the particular types of property that I have enumerated.

Now, I say, and this is the position generally of the State people who have looked at this, that for all practical purposes, this would do—this would interfere with the power to classify, because you would have to give under this bill to the carrier subject to it, any advantage that would accrue to these particular beneficiaries for which the legislature had enacted the law for a particular purpose. Now, the second point relating to (c), the use of different rates would work this way, I think. There is a possibility, you see, under (a) that the bill requires carrier property to be assessed at the lowest assessment ratio that applies to any kind of property. I think this would be the extreme interpretation of it.

I would be inclined to read it the way in which I described it first. The test would be what is the actual effective ration that exists, taking into consideration all of the legislative programs that treat other kinds of property somewhat differently from limited legislative purposes.

Now, when you come to (c), where you are talking about rates, and the bill would set up a discrimination that is forbidden, the collection of any ad valorem tax on transportation property at a tax rate that is higher than tax rates applicable to any other property in the taxing district. I think that the bill, that the bill would require that the carrier property be given the benefit of the lowest rate available for any type of property that is subjected to an ad valorem tax in that district.

The CHAIRMAN. Under the classification theory, is it permitted to impose a lower rate on one class than it is on another?

Mr. CONLON. If the constitution provides, and it does provide so in many instances. A very common one is intangible property.

The CHAIRMAN. Now, it is your interpretation of this paragraph (c) that it would entitle the railroads to the lowest rate imposed on a particular classification of property in the States?

Mr. CONLON. Or a particular type of property.

I cannot read it any other way, Mr. Chairman.

The CHAIRMAN. Can you illustrate the application of that—

Mr. CONLON. Well, yes, in a number of States, for example, it has long been the policy to classify intangible personal property, and one way to do this is to provide that instead of subjecting intangible personal property to the generally applicable tax rate, it will be taxed at a special rate fixed by the legislature, which is a very low rate, 1 mill on the dollar, or something of that sort.

Now, this is property, and this is a property tax. But this property is taxed at a rate that is a special rate, and it seems to me that (c) very clearly says that the collection of any ad valorem property tax, at a tax rate higher than tax rates applicable to any other property in the taxing district, means that the carrier property would be entitled to the lower rate.

This is what the bill says, I think. I will give you another illustration. The State of West Virginia happens to be one of the States where they have classified rates for property tax purposes. They have three classes of property.

My recollection is that the rates are 50 cents, \$1 and \$1.50. The 50-cent rate applies to agricultural property.

Now, I think the bill here would require that carrier property get that rate.

Senator MAGNUSON. On lines 16, 17, section (c), and I am just thinking out loud here, and asking your advice, if it read, the collection of any ad valorem property tax on transportation property at the prevailing tax rate, would that help it any?

Mr. CONLON. Well, I think—at the rate prevailing for property generally. That would be less objectionable from this, yes; I think so.

Senator MAGNUSON. Some such language might clear that up.

Mr. CONLON. That is so. Well, to make it clearer, still—

Senator MAGNUSON. I am just thinking out loud. I do not know whether that would or not.

The CHAIRMAN. What if you had several different types of classifications? That is, some States to induce industry to install machinery, have a lower rate on machinery used in manufacturing. Now, you have this farm products situation in Virginia; that is, if you said it shall be taxed at the prevailing rate, would that language be applied where you have several different types of classification, as you mentioned, inventory, stocks, in trade, machinery, timber?

Mr. CONLON. Well, I think probably it would have to be further qualified with reference to property used in business.

In S. 5219, the statute relating to the taxation of national banks, briefly the statute said that the income rate, the rate imposed on a national bank shall not be higher than that imposed on other financial institutions, and not higher than the highest income tax rate, imposed on commercial industrial business generally. This is a standard that can be followed. I think that the prevailing rate by itself probably would lead you to some administrative and legal problems that could be avoided from further qualification, but I think there isn't any doubt of how the bill would work as written now.

The CHAIRMAN. In studying the bill, have you had any feeling that this statute might completely invalidate the rights of the State to classify, either by constitution, statute, or otherwise?

Mr. CONLON. Well, let me answer that question this way: The bill does not operate directly on State power to classify. It operates as a practical inhibition because it says, if you, for any reason, wish to give a particular tax treatment to a particular type of property or a particular industry, you must give it to carrier property also. Now, there may be no reason for giving it to carrier property, yet the way the bill is set up you have to do it.

The CHAIRMAN. Well, would it invalidate classification insofar as classification is applicable to utilities?

Mr. CONLON. No; it would not invalidate it. I mean the classification would still exist, but you would have to give them the benefit of it. They would be removed from the impact of the classification power.

The CHAIRMAN. Well, I cannot see the difference; that is, the net result would be that the efforts to classify railroad property would be removed, because you would have to give it the lowest rate that has been given to any other classification?

Mr. CONLON. That is right.

The CHAIRMAN. All right, proceed.

Senator MAGNUSON. Comparable property.

I do not see how you could interpret it to mean the lowest rate, because the lowest rate has been used by many State legislatures to exempt, as it were, certain things, or to give tax incentives; for example, many States now are in a competition to obtain industry, and legislatures have passed tax laws to give them a 2-year period of grace, something of that kind.

I would not suggest that we would want to write into this bill that the railroads or common carriers, or anybody else would then be subject to discrimination because the legislature picked this out and did this, but I think what we are trying to get at is that common carriers should be taxed at the same or on the same equal basis as comparable property, unless some type of property has been picked out for a particular reason. That is an exception.

In the early days, they picked the railroads out to do this.

Mr. CONLON. That is right.

Senator MAGNUSON. To get them to come one place instead of another, out West.

Mr. CONLON. I think what you have stated, though, as the objective, is what is now provided as State law.

Senator MAGNUSON. Well, I think you made a point there. I think this has to be cleared up, Mr. Chairman.

The CHAIRMAN. Go ahead.

Mr. CONLON. Well, I think that—

The CHAIRMAN. That covers classification. Now, your next one is burden on Federal courts.

Mr. CONLON. Well, I referred to that briefly in response to the question the chairman asked me.

I think it has been suggested that this would simplify the matter of handling these large discrimination cases, but it would seem to me that this would not be true in any practical way. You have got to bring your evidence in and show what the level of assessment generally is, and what the level of assessment that applies to your property is, and this is a matter of proof, and I think it does not make any difference under what particular tribunal that this procedure is carried out.

Now, I think that you have this question of evaluation in here, you have to decide what the true value of the property is, and then you have to see what the assessment ratio that applies is, and you have to see the true values of other types of properties are, and to sum up, it is about the same procedure that would apply in either question, and you have to relate this discrimination to a particular taxing district, and in general, I think you would have to make your case district by district, so on the surface, anyway, it seems to me that as far as the burden of litigation is concerned, it seems fair to assume that under the provisions of the bill, to the extent that the remedy would be used, you would merely have some kind of a burden shifted to the Federal courts from the State courts, and, of course, where that type of option were exercised, this is an additional remedy.

Now, this gives the taxpayer the option to go either into the Federal or State court, and where the option is exercised, the whole chain of appeal would be changed, because instead of going from the district court or the county court on up through the intermediate appellate system, and the State supreme court, you would be going from the district court to the circuit court of appeals, and on up, and I think in passing, some mention should be made of the point that where this kind of an action is brought directly against a State, then I think you have a constitutional question under the 11th amendment, because the States do permit themselves to be sued in a remedial way in tax cases where it is alleged that there is an overpayment of taxes, but typically, they do not consent to be sued in the Federal courts and—

Senator MAGNUSON. Well, let me ask this question: There have been some experienced lawyers in the field of transportation that make a plea for more uniformity, but they do suggest that there might be a constitutional question in vesting the determination in the Federal court.

Mr. CONLON. That is another question. This is the power to determine what the value of the property is.

Senator MAGNUSON. But if Congress made a declaration on this, would that still exist? Well, they say, then it could be one way or another. I suppose they would have to go to the court.

Mr. CONLON. Well, the court has been rather strict on this matter. It came up in a *Missouri Pacific* case. This railroad was in bankruptcy, and it did not go through the administrative remedies available in the—under Arkansas law. The trustee in bankruptcy said this is too important a question, we will go into court directly. And the Supreme Court said the initial power to make that decision is in the State agency, and you must exhaust the administrative remedies there, before you can go into court. So I think the court is rather strict about saying the assessment itself must be made by the State agency, although if the State agency exceeds its authority, then the U.S. courts can send that assessment back under guidelines, and say—

Senator MAGNUSON. Well, as you know, Mr. Conlon, this committee over the years has been striving in various ways, legislative ways, procedural ways, to try to achieve for people in interstate commerce more uniformity. That goes into guidelines and everything else, and one of the basic underlying purposes is to see if we could not achieve a better semblance of uniformity.

As you point out, guidelines, in this particular field involve many legal problems. We have tried, we have not succeeded all the time, but

that has been one of the primary objectives of this committee.

Mr. CONLON. I appreciate that.

Senator MAGNUSON. People who are primarily engaged in interstate commerce; not the whole gamut.

Mr. CONLON. I think that it would be worthwhile to look at the bill and similar bills from the standpoint of impact on the whole process of tax administration.

Now, as a practical matter, the property tax administration has been marked by equalities over a period of time. Progress toward an acceptable standard of uniformity has to be made gradually, and any attempt to remedy all these disparities overnight will have extremely serious consequences for local governments which depend on revenue; this involves all types of property. Other utility property, business and nonbusiness, real and personal, tangible and intangible, residential, farm, commercial and industrial, inventory, stock and trade, and all other stocks and types, should be acknowledged that in some instance the public utility taxpayers have recognized that progress must be gradual, and they have gone along with programs that call for uniformity within a reasonable period of time. State and local governments have improved their assessment techniques over a period of time. I think the improvement seems to be the spirit that has been provided by the State courts.

Instances of such action in the past year have been noted. Those three I mentioned earlier, but I would like to emphasize also that the State tax departments have in many cases developed the procedures through which the existence of discrimination is established, and that is these official assessment ratio studies that have been conducted in so many States. And the National Association of Tax Administrators has been a leader in this effort by providing these guidelines for the conduct of these assessment ratio studies, which turn up and demonstrate to the court the existence of discrimination not only to the carrier property, but wherever else it exists, and have provided the bases which I think have caused the courts to say that we must step in here and lay down a mandate, and give relief in those instances where discrimination has been established, and I think that it would be wise to continue this basis in State courts.

I thank you, Mr. Chairman.

The CHAIRMAN. Senator Cannon?

Senator Magnuson?

Senator MAGNUSON. In the list of State agencies which you say join you in this statement, what is the reason for some States not being included?

Mr. CONLON. Well, some have sent in communication to the committee separately. I think for example, the new Department of Revenue in Washington has.

Senator MAGNUSON. But the conference in June did pass a resolution?

Mr. CONLON. Yes, sir. And that is appended.

Senator MAGNUSON. One more question. You did mention that there has been \$13 billion, I believe, put into the railroads in rolling stock, and other capital investment?

Mr. CONLON. \$13 billion in investment in new plant and equipment over the period since 1956. Those are figures from the survey—\$13 billion.

Senator MAGNUSON. And then you followed that with the statement that the assessed value, I presume you mean the total assessed value of the railroads within the States has not been any higher. Wouldn't you have to also place in there the fact that while they are putting in new rolling stock, the depreciation and deterioration of the old stock has been going down, down, down?

As a matter of fact, that is the common public complaint against the railroads, and if I had my single way in this matter, I am not sure that I would not offer some kind of an inducement for new modern rolling stock in this particular case. At one time that was suggested in this committee. So therefore the overall assessed valuation has to be determined by—

Mr. CONLON. Oh, yes. If I did not make that clear, I meant to, that this was a point to be considered, that I realize there are withdrawals, and there is depreciation, and the like, but it is a fact, I think that you do have to pay some attention to that in this period—there has been a substantial investment.

Senator MAGNUSON. I will add, Mr. Chairman, for the record, that a letter to you from the Department of Revenue of the State of Washington, which is not included in this—

Senator LAUSCHE. Does that support the bill?

Senator MAGNUSON. No, it follows the line suggested by the witness.

The CHAIRMAN. And that is that there should be gradual approach to a solution?

Senator MAGNUSON. Well, they say the Federal action should be directed toward encouraging States to improve their taxing administration, so that all taxpayers will receive uniform and equitable treatment. There is much to be done. I quote from this letter, "The State of Washington now has underway a program of this character that will take several years to fully implement".

Well, of course, that last sentence is the trouble. That is the problem. I am sure that the State is trying to do this, but when he mentions several years, why that is when you get to the problem, in the whole field.

Mr. CONLON. I suggest, Mr. Chairman, if you look into it, you will probably find, as far as the utilities are concerned, this has been largely achieved over a program that has taken place during the period of several years past, and that the problems referred to here are other areas of difficulty in the administration of property taxes, not those particularly related to utilities.

The CHAIRMAN. I have sent to your desk there appendix C. It shows, I think, some 20 States in which the assessment against utility—railroad property has been in excess of the assessment against other properties.

Take a look at it.

Mr. CONLON. I see it, sir.

The CHAIRMAN. Now, let's take Alabama. The statement says that the percent of value at which railroad property was assessed in 1965 in Alabama is 33 percent of its market value, I assume, and the assessment of other property is 17 percent of its market value. That is a

requirement of uniformity, therefore, and how does this come about?

Mr. CONLON. Well, in the State of Alabama, I judge that the figure which represents the value at which the property is assessed is the census report on the prevailing level of assessments average on residential property. I think this is the figure that is based on objective standards, the assessments are compared to the selling prices of these properties, and I think the figure you get, if it is an accurate one.

The CHAIRMAN. Would you say that this disparity is the result of the execution of a law which, if properly executed, will not have produced this difference?

Mr. CONLON. Yes.

The CHAIRMAN. That is your general judgment in all of these cases where there is a difference?

Mr. CONLON. It certainly is. And in this case here, the statutory standard is laid down there, 44 percent of value, and it should apply to all types of property.

Now, the 17, I think this is established objectively. I am not sure where the 33-percent figure comes from on the value of the railroad property, but assuming for purposes of this discussion, this is what it is, then there is an illegality here which comes about by virtue of the fact that the law is not being strictly obeyed.

Now, it is my understanding that this situation was brought to the courts in Alabama, and proof of the case presented, and the court said this is not permissible under the laws of our State, and we will grant relief in the premises and the court retained jurisdiction over the proceeding to see that relief was carried out.

It is my understanding that the court ordered this to be done over a period of 2 or 3 years, but I am not certain about that.

The CHAIRMAN. Mr. Ogden, the 17-percent figure which you have as the percentage of valuation of all property other than utilities, is that a sort of average of the other types that were assessed?

Mr. OGDEN. Senator, that was a figure produced by a very carefully conducted ratio study for the purpose of litigation. We have in the room Dr. Weil who testified in support of that. I would say the study was conducted along the lines recommended by the National Association of Tax Administrators for which this gentleman speaks, and incidentally, the 33 percent that we used was not the percent at which the property was, actually.

The CHAIRMAN. What?

Mr. OGDEN. I was just saying that the 33 percent shown as the railroad average was not the average at which it was actually assessed on that year, but the reduced figure as a result of the court case.

The CHAIRMAN. Now, the 17 percent figure, what does that cover? Does that cover a composite of different assessments on different types of property, Mr. Weil?

Mr. WEIL. Yes, Sir.

The CHAIRMAN. What types of property were involved, if you recall?

Mr. WEIL. As far as I know, all types of property, although admittedly residential property predominated. There was vacant land in there, and commercial industrial property, but residential predominated.

The CHAIRMAN. And this principle which you just now recited persists to each of these percentages running down through the table?

Mr. WEIL. Well, I wasn't involved in all of these. I was involved in Alabama. I have been involved in the studies in Illinois, and in Illinois for example, an effort was made to get appraisals on industrial and commercial property in addition to the sales in order to increase the number, and I believe in my statement yesterday I indicated, and I would like to reemphasize this, that I have seen just as many cases of industrial property that was underassessed as overassessed. It works both ways.

Mr. OGDEN. The other percent, Senator, were gathered largely from the State agencies themselves. Actually, by 1965 the census figures which came from 1960 were too old, and we used for the most part State agency figures or our own as in this instance, and in some instances special ratio studies conducted by industries, and in some instances our industry, sometimes other industries, but these were very scientifically done studies in this case.

The CHAIRMAN. Now, Mr. Conlon, I direct your attention to Ohio. This appendix G shows that railroad property is assessed at 100 percent, and I suppose the composite or average assessment on other property is 55 percent. Are you familiar with the Ohio situation?

Mr. CONLON. Well, I am not familiar at all with what the true value of railroad property in Ohio is. I know in Ohio that the standard for assessment of personal property used in business is 50 percent, isn't it, and other property it is 100.

The CHAIRMAN. And that is done in pursuance to the classification authority that Ohio has, is that right?

Mr. CONLON. Yes, that was specifically authorized by constitutional amendment. And also, I believe, in Ohio intangibles are taxed on the basis of their yield when they produce income, and when they are not income producing, they are taxed on the basis of a flat rate that is applicable to an intangible loan.

The CHAIRMAN. Do you have some questions you wanted to ask Mr. Conlon?

Mr. SENDER. Yes, sir.

Your reference to the additional investment of \$13 billion was for what years? I wanted to point out that ICC figures show a decline in investment from 1960 to 1965, a very slight decline in railroad reported property investment; \$35,513 million in 1960, \$35,489 million in 1965.

Mr. CONLON. This is the aggregate of all investment, I take it, whether you are using the figure of \$35 billion. These figures I have are simply a compilation from the annual reports of the Department of Commerce on investment on plant equipment by industry, and the investments for the years 1961, 1962, 1963, 1964, 1965, and 1966 respectively, range from \$670 million in new plant and equipment in 1961 to \$1,960 million in 1966, a total in that 6-year period of \$7,740 million. I simply referred to this to suggest that there has been actually, over the years, a good deal of State action and recognition of the fact that these unequal assessments, I suggested that this might be one of the points that might be taken into consideration in evaluating this whole problem.

Mr. SENDER. On August 13, 1964, 3 years ago, you submitted a letter to the House Interstate and Foreign Commerce Committee when it considered a similar bill, and in that letter you concluded by saying, on the whole, the States and local governments have achieved a good deal of

improvement in this field in recent years, and the prospects are that they can do a good deal more if the responsibility and means of dealing with the problem are left in their hands.

Have the events of the last 3 years borne out your prophecy?

Mr. CONLON. Well, I would say, "Yes" and I say in passing here, in the last year, three of these provisions were brought in different States where a case was made, and the relief was granted.

Now, I think that in a number of instances here, at least to the best of my knowledge, there hasn't been any attempt made to go into court and demonstrate the existence of the discrimination or the alleged discrimination. I think some of the States listed up here, there hasn't been any action of that kind; for example, in Alabama over a period of years, until the action was brought which resulted in relief.

Mr. SENDER. Well, the examples, then, of responsibility and means of dealing with the problem is that the railroad industry should bring these suits in State courts?

Mr. CONLON. I think as a minimum, if there isn't alleged discrimination that some attempt to deal with it judicially should be the first step to be taken.

The CHAIRMAN. Now, I wanted to put a question. In your concluding paragraph you state any attempt to eliminate these disparities overnight would have consequences for local governments which depend on this source of revenue. It was testified yesterday that the impact upon local governments would not be as extensive as is claimed, and would, in fact, constitute a very minute percentage of the revenues received by the local government.

Will you elaborate on this sentence of your concluding paragraph?

Mr. CONLON. I couldn't give you the figures offhand, but it sounds reasonable to me. If you look at property taxes in the aggregate, the differences involved by reduction in railroad taxes of a few hundred million dollars will be small, but if you were talking about particular jurisdictions, where carrier and other utility property happened to be a substantial part of the tax load, then the situation is quite different. And you would have in effect, if there were discriminations in these instances, and it were remedied overnight, you would have a tremendous switch in the distribution of property tax liabilities from one group of taxpayers to mostly homeowners, and I think considering the difficulties that local governments already are faced with in raising property taxes, and by the way, they have raised them substantially in the past 10 or 15 years, this would really be a very serious financial problem for them.

And I think again in my view, this probably had a great deal to do with this temporary transitional thing that was enacted by the Commonwealth of Kentucky, to tide it over.

The CHAIRMAN. Now, it was testified yesterday that in going into the State courts, unusual delays encountered, many lawsuits have to be brought in different tax assessing districts, and that that makes heavy and cumbersome, and practically insoluble, the problems confronting the railroads.

Mr. CONLON. Well, I think the railroads have a point there, that in some States when the property is spread on the rolls of particular taxing districts, it is necessary to make your case in each of these districts.

The CHAIRMAN. Now, have you thought out at all how this barrier, or this entanglement of being able to get into court and obtain reasonably expeditious disposition of the problem could be solved by us? We have in the bill two things: substantive law, and procedural law. If you wanted to remove this obstacle of getting justice, is there any way that we could do it?

Mr. CONLON. Well, my frank opinion, Mr. Chairman, is that that would be very difficult, because even in the Federal courts, it would be necessary to establish the existence of discrimination with respect to the district where the tax is being imposed.

Now, I would suggest that perhaps the most expeditious way of dealing with this type of problem, when the disparity has been established, and you have the situation of State assessed property on the one hand being put on local rolls, that the recent action of the Georgia Supreme Court seems to me to be very constructive—what the court did in this recent Georgia case which I have cited in the statement presented here, is that it required the State agency, which made the assessment of the railroad properties, to spread these on the rolls of the various localities on the basis of the demonstrated assessment level, prevailing level that existed, and had been demonstrated and found in those jurisdictions.

Now this means that there was one proceeding, and the remedy that the court gave tailored in effect its assessment ratio to that prevailing in each of the local districts where the tax was actually imposed.

The CHAIRMAN. Now that was achieved in Georgia but the complaint is that in many States their rulings would just make it impossible to ever get to a final judgment and solution of the problem.

Mr. CONLON. Well, I think that it is not impractical to do this sort of thing in most States. The statutes would have to be amended to provide it, but the point I am making here though is that the court here in this State as a means of providing a practical and effective remedy did hand down this law. I think it should be encouraged.

The CHAIRMAN. Is there anyone here representing the carriers or the utilities who can discuss this Georgia case, what was achieved there, and has not been achieved in other cases?

Mr. OGDEN. Senator, we do not have property in Georgia, and I quickly look and I don't see any attorneys here who represent railroads that do, but I might point out this, that what the gentleman has described, the court undertook to do in Georgia is exactly what the Illinois General Assembly did in Illinois, and exactly the procedure that led to the tortuous—ultimately led to the tortuous round of litigation in the State of Illinois, which has been going on there since 1952, and is still going on.

The CHAIRMAN. All right. Is there anything further? You want to make a comment on that?

Mr. CONLON. No.

The CHAIRMAN. Senator Magnuson?

Senator MAGNUSON. No.

I have been just reading here of the action in Tennessee and Kentucky. How would you get around those things unless you had something like this?

Mr. CONLON. What things?

Senator MAGNUSON. Where the legislature went out—

Mr. CONLON. The court of Kentucky has said that local assessors must obey the statute.

Senator MAGNUSON. The legislature provided——

Mr. CONLON. The legislature, as I understand it, has a transitional provision in order to prevent this great change overnight, said that for the next 2 years the utilities—now this is all the utilities, not only the railroads—should continue to pay the same dollar amount of taxes that they had paid previously.

Senator MAGNUSON. And in Tennessee, of course——

Mr. CONLON. The Tennessee Legislature——

Senator MAGNUSON. They were very expedient there. When the airlines decided to leave, they said we'll give you tax benefits, but the railroads couldn't leave because they were fixed, and it poses a problem. And I see the list here, Tennessee——

The CHAIRMAN. Which one are you reading?

Senator MAGNUSON. That is appendix C. They are 95 percent as against 30. I don't know how these figures were arrived at. Well, off the record.

(Discussion off the record.)

The CHAIRMAN. Well, my own view is that I don't want to knock out the right of classification. I do not want to see the railroads or other utilities impeded in their effort to get before a court to have a determination of their complaint of discrimination. I subscribe, of course, fully to the proposition that there must be equality and uniformity. I believe that the immediate passage of the bill before us would work hardship on many communities in getting themselves adjusted to the change that will be required.

Now, I might be challenged on the basis of this last statement that this justifies delay. I don't know who argued yesterday that justice delayed is justice denied, but at least that in summary is my thinking.

All right.

Senator MAGNUSON. Could I ask one more question? We have a very controversial matter which is on the periphery of this, but involves this, the State compact tax bills. Very controversial, as you know. The House has acted on one. Do you think some kind of a State compact in this area could help achieve more uniformity?

Mr. CONLON. Well, of course the compact to which you have reference would have no application here, I think. It is limited to ——

Senator MAGNUSON. But one of the purposes is to achieve uniformity, of assessments on people doing business in interstate commerce.

Mr. CONLON. Well, I give you my opinion that this is something that is completely within the remedy—within the power of each of the individual States to remedy, and the question is getting the procedure set up to carry them out.

(The prepared statement of Charles F. Conlon follows:)

NATIONAL ASSOCIATION OF TAX ADMINISTRATORS,
Chicago, Ill.

Hon. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR LAUSCHE: Here is a revised statement which I would like to submit for the record of the hearings on S. 927. The revised statement is identical to

that submitted in advance except for the addition of the states of Iowa and Tennessee to those listed on the first page, the addition of the reference to Montana in the last paragraph on page 3, and the addition of the Iowa State Tax Commission and the Tennessee Public Service Commission to the list of state tax agencies following page 12.

In response to your question about the views of the states not joining on the statement, I have reviewed all the communications received on this subject with the results shown on the tabulation attached. Officials in some of the states from which there has been no expression may have written directly to the Subcommittee and it is possible that others may regard the resolution adopted on June 15, 1967 at the National Association of Tax Administrators' conference in San Francisco as an expression of their views.

It was a privilege to appear at the hearings and a great pleasure to see you again after so many years. Thank you for your courtesies.

Sincerely,

CHARLES F. CONLON,
Executive Secretary.

RE S. 927

States joining in statement: 24; Alabama, Arkansas, California, Idaho, Illinois, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, Ohio, Oregon, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

Other States opposed: 4; Florida, Minnesota, Oklahoma, and Washington.

State not opposed to bill: 1, Colorado.

No comment on bill at this time: 2; Kansas and North Carolina.

No expression received: 9; Arizona, Georgia, Indiana, Louisiana, New Hampshire, New Jersey, New Mexico, North Dakota, and South Carolina.

The notice of hearings was not sent to the following 10 States either because the ad valorem basis of taxation is not used in respect to railroad property or there is no state central assessment agency involved in the assessment of railroad property: Alaska, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Pennsylvania, Rhode Island, Texas, and Vermont.

PREPARED STATEMENT BY CHARLES F. CONLON, EXECUTIVE SECRETARY,
NATIONAL ASSOCIATION OF TAX ADMINISTRATORS, CHICAGO

The tax agencies of the following states join in this statement in opposition to the enactment of S. 927: Alabama, Arkansas, California, Idaho, Illinois, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, Ohio, Oregon, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

The National Association of Tax Administrators by resolution adopted at its 1967 meeting in San Francisco, June 11-15, expressed its opposition to legislation providing special remedies in federal courts to deal with state and local tax assessment problems. The executive committee of the Southeastern Association of Tax Administrators endorsed the position outlined in the National Association of Tax Administrators' resolution at its recent meeting in Charleston, South Carolina, July 12, 1967. Also, the International Association of Assessing Officers at its 32nd annual conference, September 14, 1966, adopted a resolution opposing H.R. 4972 "and any similar proposals" to provide a remedy in the federal courts to contest and enjoin alleged discriminatory property tax assessments of common carrier property. Copies of these resolutions are attached to this statement.

The opposition of the state tax departments to S. 927 is based on these points:

- (1) The bill is unnecessary because there are adequate remedies in the courts of the several states to deal with alleged discriminatory assessments;
- (2) The bill, for all practical purposes, would restrict the powers of state legislatures to classify property for tax purposes; and
- (3) The bill in no way simplifies the procedure for challenging assessments on carrier property. In fact, it involves a complicated procedure which would necessarily require federal courts to review the valuation of carrier property in order to determine whether a specific property tax assessment is discriminatory.

OBJECTIVE OF THE BILL

If S. 927 were enacted it would confer general jurisdiction on the courts of the United States to review tax assessments on the operating property of common

carriers subject to the Interstate Commerce Act in any case where it is alleged the assessment or taxation of the property is discriminatory on the basis of the standards laid down in the bill. S. 927 would further authorize the federal courts to enjoin the collection of that part of the tax alleged to be discriminatory.

In effect the bill would give the carrier the option to substitute this special injunctive procedure in place of the administrative and judicial review procedures now provided by state law. This special remedy contrasts sharply with that ordinarily prevailing in the property tax field, namely, payment of the tax under protest on the date due with provision for refund if the taxpayer's claim of overpayment is thereafter sustained.

Analysis of the bill raises two basic questions. First, is there any need to establish this special remedial procedure to protect Interstate Commerce Commission common carrier property from discriminatory taxation. Second, what is the case in support of the extensive discrimination which is alleged to exist.

STATE COURT REMEDIES

The need for legislation setting up a special remedy is implicitly based on the assumption that there is no speedy, effective remedy in the state courts in property tax discrimination cases. Even if this assumption were correct, there still would be no need for S. 927 because the federal courts do have jurisdiction in discrimination cases in the absence of an adequate state court remedy. There was an instance of this kind just last year in the United States District Court for the Middle District of Tennessee.¹

But the assumption that there is no effective remedy in state courts is not well founded. In the past 15 years, the high courts of a number of states have recognized the practical necessity of insisting on uniformity of assessment prior to all other consideration; and, they have granted relief to taxpayers whose property was assessed on a discriminatory basis even though the amount of the assessment was less than the legal standard. Alternatively, in a few instances, state courts have retained jurisdiction of proceedings and ordered assessing officials to assess *all* property according to the legal standard.²

Indeed there appears to be no instance in recent years where the highest court of a state has denied relief in a discrimination case where the issue has been clearly presented and where the fact of discrimination has been established by appropriate proof although in one state, Montana, relief would be limited to discrimination within the class.

The jurisdictions where there have been court decisions in which this principle of relief has been applied either directly or indirectly through sanction given to assessment equalization programs include: Alabama, Arizona, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oregon, South Dakota, and Tennessee.

And, to bring the record down to the present, it might be noted that remedial proceedings of this kind involving railroad property were decided favorably to the taxpayer in the courts of Alabama, Georgia and Tennessee within the last year or so.³ This brief recital should serve to resolve my doubt about the availability of state court remedies.

DISCRIMINATION IN CARRIER ASSESSMENTS

The maintenance of substantial uniformity in the assessment of all the different types of property subject to local property taxes is a problem. There is no question about that. Anyone familiar with property tax assessment practices recognizes that these disparities crop up in many States, e.g., residential property versus other property; downtown property versus suburban property; real property versus personal property; business property versus owner-occupied property, and so on. However, if the existence of discrimination is established, the courts, as noted above, will provide relief.

¹ *Louisville and Nashville Railroad Co. v. Public Service Commission of Tennessee et al.*, 249 F. Supp. 894 (1966).

² See, for example, *Russman v. Luckett*, 391 S.W. 2d 694 (Kentucky, 1965).

³ Alabama: *Louisville and Nashville Railroad Co. v. State of Alabama*, Circuit Court, Montgomery County, opinion and decree, Apr. 5, 1967.

Georgia: *Undercoffer v. Seaboard Airline Railroad Co.*, 152 S.E. 2d 878 (Georgia Supreme Court, 1966); see also *McLennon v. Undercoffer*, 222 Ga. 302 (1966).

Tennessee: *Louisville and Nashville Railroad Co. v. Public Service Commission of Tennessee et al.*, 249 F. Supp., 894 (W.D. Tenn. 1966); *Southern Railway Co. v. Clement et al.*, Tenn. Court of Appeals, Middle Section (1966).

The enactment of S. 927 is sought generally on the premise that railroad property is assessed on a discriminatory basis compared to other types of property. In general, the fact of discrimination and its extent is sought to be established on a broad scale by comparing state-by-state assessed values of railroad property (at assumed legal standards) with the United States Bureau of the Census sales-assessment ratios of transferred properties or by more recent assessment ratio studies conducted along similar lines by a state agency.

But there is a serious difficulty about this approach whether it be used to establish the fact of discrimination or the extent to which it exists. In the case of locally assessed property, the average level of assessment may be determined within acceptable limits by sales comparison methods because many of the types of properties involved change hands frequently and actual sales prices and tax assessments can be compared. However, the property of carriers and other public utilities is not subject to such a sales comparison test because public utilities are seldom sold as going concerns. Therefore, while the assessment ratios cited for representative locally assessed property are based on objective standards derived either from Bureau of the Census data or comparable state studies, the assessment ratios attributed to carrier properties are subjective. In any case they have not been subjected to the acid test of the market as have been the assessment ratios with which they are compared.

A second point that certainly ought to be considered is whether an assessment ratio derived exclusively from sales of properties may be accepted as establishing the assessment level of all locally assessed property in a particular state. A study based wholly on sales is bound to have a relatively small number of commercial and industrial properties in the sample. For example, the sales-assessment ratio studies in the 1962 Census of Governments report show only six states where basic sales information was obtained for 25 or more sample industrial properties. The Census study includes no personal property and this is true also of many state assessment ratio studies.

A final and most important point concerning the use of Census data to demonstrate the existence or extent of discrimination against railroad property is that the Census survey was limited to locally assessed property. No attempt was made to measure the relationship between locally assessed and state assessed property. This was explicitly stated in the Census report.

"The survey was limited to sales of real estate listed on local property tax rolls. No study of the relation between assessed value and market worth has been attempted for state-assessed property or for locally assessed personal property".⁴

The method generally used to value public utility enterprises also has an important bearing on the allegation of discrimination against carrier property. The specific issue here is whether railroad properties are assessed on a discriminatory basis compared to all locally assessed property. By and large, local assessments are based on replacement costs. Railroad assessments are generally based on the unit approach with major emphasis on capitalized income and stock and debt values. An experienced former railroad assessor for the State of Illinois has commented on the implications of the use of these two different approaches and their bearing on the issue of discrimination as follows:

"* * * It would seem to follow that if the property of the Class I rail carriers were dealt with in the assessment process in the same fashion as other property, the aggregate of railroad assessment might come close to equaling the \$48 billion level that measures depreciated reproduction cost of rail plant and equipment, including the present value of land and rights. The fact that the sum total of capitalized earnings of the industry as a whole works out at less than a third as much as this, combined with the likelihood that the stock and debt valuation may well be smaller still serves to suggest that the valuation of railroad property upon which the industry's ad valorem tax liabilities rest must be substantially lower in relation to the replacement cost yardstick than the values reached in the taxation of noncarrier property.

"* * * The most significant meaning of all this is that the railroads in effect receive allowances in the normal course of assessment that amount to *de facto* credits or deductions that are not similarly available to noncarrier properties.

"These considerations would seem to merit recognition in any evaluation of the discrimination that imperfections in the assessment equalization process are held to inflict upon the rail carrier industry. At the same time, it should be clear that this is not to say that the state assessment authorities are any less than

⁴ Census of Governments, 1962, Taxable Property Values, p. 9.

completely candid when they insist that the values assigned to railroad properties reflect their best estimates of full fair market value. The point is, however, that when they adhere to the unit rule, the value they find is an algebraic sum of positive and negative values, quite unlike the results of the valuation process applied to properties of other classes".⁵

IMPACT OF THE BILL ON STATE POWER TO CLASSIFY PROPERTY FOR TAX PURPOSES

S. 927 would render invalid any constitutional or statutory classification of property for ad valorem tax purposes insofar as that system establishes a higher assessment ratio for any property owned or used by an ICC carrier as operating property than the assessment ratio of all other property in the taxing district. Just how these provisions of the bill are to be interpreted is not clear. One interpretation is that ICC carrier operating property may not be assessed at a higher ratio of value than any other property subject to taxation in the taxing district, i.e., at the lowest ratio authorized for any class of property. Another interpretation is that the assessment ratio applied to carrier property may not exceed the actual average assessment ratio of all other taxable property. Thus, where differential assessment ratios are provided for specific types of property (inventories, stock in trade, machinery, timber, lands used exclusively for farming purposes, for example), or partial exemptions are granted (residence of an aged person or a veteran or a general homestead exemption, for example), the effect of these differential assessments or partial exemptions would have to be computed and taken into consideration in establishing an assessment ratio ceiling to apply to carrier property. However, identical property owned by noncarriers would be assessed at the level prevailing for that type of property rather than at the lower rate to which the carrier would be entitled under S. 927. In effect, these property owners would be picking up part of the carriers' tax bill.

The standard provided in S. 927 applies also where classification is achieved by means of different tax rates. There is no question about the interpretation of this restriction. The bill states that carrier operating property may not be taxed at a rate higher than the rate applicable to *any* other property in the taxing district. In other words, carrier property may only be taxed at the lowest tax rate applicable to any kind of property in that taxing district. For example, in a jurisdiction where the lowest tax rate limit is 50¢ per \$100 on personalty used exclusively in agriculture, this would also be the highest applicable to railroad carrier property under the provisions of S. 927, even though identical property owned by noncarrier taxpayers would be subject to the higher tax rates provided by state law.

The same thing would be true in the states where intangibles are taxed at a special rate which is lower than the tax rate applicable to real and tangible personal property.

In short, under S. 927, where a state constitution or state law provides some kind of property tax concession to serve a specific purpose (to relieve an aged person of part of his property tax burden or to encourage a specific industry, for example), the same concession in whole or in part would have to be granted to a carrier taxpayer in respect to its operating property even though the carrier's business is completely unrelated to the purposes intended to be served by the constitutional or statutory provision.

BURDEN ON FEDERAL COURTS

It is suggested that S. 927 sets up a simple procedure to remedy alleged claims of discrimination; that it would avoid a multiplicity of actions and that it would not burden the federal courts with valuation questions. An analysis of the bill suggests that in practice the procedure would not be substantially different from a suit in state courts.

In general, properties assessed as a unit by state agencies are spread proportionally on local tax rolls and the amount of tax due is computed on the basis of the tax rate in effect in the particular taxing district. Whether there is any discrimination depends on the relationship between the assessment ratio of the state-assessed property which is spread on the local roll compared to the assessment ratio of the locally assessed property on the roll. If the former is significantly higher than the latter there is discrimination but this difference must be established as a fact.

⁵ Lynn A. Stiles, "Some Aspects of the Unit-Rule Approach in the Ad Valorem Taxation of Railroads," a paper presented at the 34th Annual Meeting of the National Association of Tax Administrators, Chicago, Ill., June 1-4, 1966.

If there is any question about the assessment ratio used by the state agency, then the reviewing agency—whether it be a board of tax appeals, a state court or a United States district court—must decide whether the property has been correctly valued in order to determine what percentage of that value is *actually* used for assessment purposes. This step is unavoidable in the circumstances. A United States district court cannot, of course, reassess the property even though it finds that it has been improperly assessed. In that event, the case must be remanded to the assessing agency for appropriate action.

The next step is to relate the alleged discrimination to a particular taxing district. This requires proof of the assessment level prevailing in that district. If several different tax districts are involved, then the prevailing levels in each must be established. There are no short cuts, whether the proceeding be in a court of the United States or a state court. Similarly, in those jurisdictions where the state agency spreads the value on the local roll in accordance with the prevailing local assessment ratio as determined by the state agency, a claim of discrimination with respect to any one or more of those local taxing districts would raise the same type of question and would require substantially the same adjudicatory procedures.

Insofar as the burden of litigation is concerned, then, it seems fair to assume that under the provisions of S. 927, the burden of dealing with assessment discrimination cases will be shifted from the state courts to the federal courts to the extent that the complaining taxpayer exercises his option to sue in a federal court rather than in a state court. Where this option is exercised, the channel of appeals would also be changed—through the United States Courts of Appeal and the Supreme Court rather than through the appellate and supreme courts of the states.

Reference might also be made to the point that if, under some circumstances the remedial proceeding is brought directly against the state agency making the assessment, the bill would present a constitutional question under the provisions of the Eleventh Amendment. Under the typical state statute authorizing suits for refunds, consent to sue the state is limited to suits in state courts. Presumably this point would present no difficulty where the suit is brought against a local government.

CONCLUDING COMMENTS

S. 927 and similar bills should be appraised also from the standpoint of their impact on the whole process of property tax administration. As a practical matter, where property tax administration has been marked by inequalities over a period of time, progress toward an acceptable standard of uniformity has to be made gradually. Any attempt to remedy all these disparities overnight would have extremely serious consequences for local governments which depend so heavily on this source of revenue. Property tax revision involves not only carrier property but all types of property—other utility property, business and non-business property, real and personal property, tangible and intangible property, residential, farm, commercial and industrial properties, inventories and stock in trade and all other classifications and types. It should be acknowledged that in some instances public utility taxpayers have recognized that progress must be gradual and have in fact gone along with programs that call for the achievement of uniformity within a reasonable period of time.

States and local governments have improved the quality of their property tax assessments a good deal over the past few years and one reason for this improvement appears to be the spur provided by state courts in providing effective remedies in discrimination cases. Instances of such action in the past year have already been cited. It should also be emphasized that the state tax departments have in many cases developed the procedures through which the existence of discrimination is established, namely, the official assessment ratio studies conducted in so many of the states.

It would be wise to encourage the continuance of this sense of responsibility in state courts. To give the federal courts what is in effect concurrent jurisdiction in these cases is not the way to do this.

The State tax agencies which join in this statement are:

Alabama: Department of Revenue.

Arkansas: Tax Division of Public Service Commission.

California: State Board of Equalization.

Idaho: State Tax Commission.

Illinois: Department of Revenue.

Iowa: State Tax Commission.

Kentucky: Department of Revenue.

Maryland: State Department of Assessments and Taxation.
 Michigan: State Tax Commission.
 Mississippi: State Tax Commission.
 Missouri: State Tax Commission.
 Montana: State Board of Equalization.
 Nebraska: Tax Commissioner.
 Nevada: Nevada Tax Commission.
 New York: State Board of Equalization and Assessment.
 Ohio: Department of Taxation.
 Oregon: State Tax Commission.
 South Dakota: Department of Revenue.
 Tennessee: Public Service Commission.
 Utah: State Tax Commission.
 Virginia: State Corporation Commission.
 West Virginia: State Tax Department.
 Wisconsin: Department of Revenue.
 Wyoming: State Tax Commission.

RESOLUTION ADOPTED BY THE MEMBERS OF THE INTERNATIONAL ASSOCIATION OF
 ASSESSING OFFICERS AT THE 32D INTERNATIONAL CONFERENCE ON ASSESSMENT
 ADMINISTRATION, SEPTEMBER 14, 1966, TORONTO, ONTARIO, CANADA

Whereas H.R. 4972 has been introduced in Congress for the purpose of providing a remedy in the federal courts to contest and enjoin alleged discriminatory property tax assessment of common carrier property subject to the Interstate Commerce Act; and

Whereas the special remedies afforded under this bill apply to all property of carriers without regard for the classification provisions in state constitutions and statutes; and

Whereas adequate remedies are provided by the laws of the states: now, therefore, be it

Resolved, That the members at the thirty-second International Conference on Assessment Administration express their opposition to H.R. 4972 and any similar proposals which provide a special remedy against the collection of state and local property taxes for a particular class of taxpayer in respect to assessment disputes for which adequate remedies are presently provided by the laws of the states.

RESOLUTION ADOPTED BY THE EXECUTIVE COMMITTEE, SOUTHEASTERN ASSOCIATION
 OF TAX ADMINISTRATORS, CHARLESTON, SOUTH CAROLINA, JULY 12, 1967

Be it Resolved, That the Executive Committee of the Southeastern Association of Tax Administrators endorse Resolution Nine adopted at the 35th Annual Conference of the National Association of Tax Administrators in San Francisco, June 15, 1967, relating to legislation which has been introduced in the United States Congress which deals with the assessment of transportation property of common carriers (H.R. 7205 and H.R. 431) and which Resolution also expresses the thinking of the Executive Committee with respect to S. 927, a bill pending in the Senate identical to H.R. 7205 and H.R. 431.

The CHAIRMAN. This will conclude the hearings on this bill. The record will be kept open for 10 days. Undoubtedly there will be further communications from Governors and others.

The meeting will stand adjourned.

(Thereupon, at 11:15 a.m., the subcommittee was adjourned.)

(The following communications were subsequently received for the record:)

OREGON STATE TAX COMMISSION,
 Salem, Ore., July 26, 1967,

Hon. FRANK J. LAUSCHE,
 Chairman, Surface Transportation Subcommittee of the Commerce Committee,
 New Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: We wish to advise you of Oregon's position on S. 927. We would appreciate your presenting this letter to your Subcommittee and filing it as part of the Subcommittee's hearing records.

We have a number of objections. First and foremost is that the states themselves, if they are engaged in discriminatory practices, should have the opportunity to resolve the tax problems at the local level. Oregon, in conjunction with its reappraisal program begun in 1951, took steps to bring the assessments of the so-called "utilities", or corporations whose property is centrally assessed by the State Tax Commission, including transportation of property of common carriers, in line with the assessments of local properties. To have lowered utility assessments in one slash would have seriously upset the stability of property tax assessments in many districts, so the Commission undertook a program of step-down reductions in valuation. What was a practical administrative idea did not meet the requirements of the law, however, and in *Union Pacific Railroad Company v. State Tax Commission*, 232 Or. 521, 376 P2d 80 (1962), our Supreme Court held that assessing railroad property at 117 percent of true cash value while local property was at 100 percent violated our constitution and statutes. However, the Oregon program of equalization has brought transportation property in line with locally assessed property. We feel that each state can do this on its own without federal intrusion.

More important, however, is the fact that each scheme of enforced uniformity at the federal level runs into the classification of property for ad valorem tax purposes which is permissible both under the federal constitution and under the constitutions and statutes of many states, including Oregon. The proposed legislation would immediately create a problem of statutory interpretation as to the meaning of "assessed value of all other property in the taxing district subject to a property tax levy." The limiting effect of the words "subject to a property tax levy" appears to eliminate the problem that would immediately arise if this proposed legislation created a violation merely by the existence of exempt property. Obviously, transportation property would be assessed at a higher ratio of market value than exempt property. However, the problem still remains by virtue of partial exemptions given for laudatory economic and social reasons by state legislative bodies, such as Oregon's. Examples of partial exemptions in Oregon law include the following:

(1) In the assessment and taxation of timber in western Oregon, trees less than 12 inches in diameter are exempt, but if cut are taxed at 100 percent of the market value in the year after severance. Other trees over 12 inches and less than 90 years of age are assessed at 30 percent of market value and old growth trees over 90 years of age are assessed at 30 percent and in some cases 25 percent of market value. ORS 321.605 to 321.680. A statutory scheme for valuing the timber on small tracts of not more than 1,000 acres in western Oregon exists under ORS 321.705 to 321.765. The statutes provide for a per acre value which covers both the land and the trees. Eastern Oregon timber is exempt but is taxed by a severance tax. Western Oregon timberland is assessed on its value as timberland so long as it is used for that purpose, without regard to a change in its highest and best use. Lands in Oregon classified as reforestation lands pay an annual forest fee and then a yield tax upon severance.

(2) In the assessment of water craft various rates apply to various vessels in various situations. For example, ships and vessels having a home port in Oregon which ply the high seas are assessed at 1 percent of the true cash value. Other ships and vessels with Oregon home ports are assessed at 10 percent of the true cash value.

(3) The homesteads of senior citizens are given partial tax exemptions under ORS 307.345 to 307.365, depending upon the age of the person and the income of the household.

(4) In the assessment of the homestead of certain disabled veterans, an exemption of \$7,500 of the true cash value of such homesteads is allowed under ORS 307.250 to 307.300.

(5) Motor vehicles and trailers and aircraft pay a fee in lieu of ad valorem taxation which may be either a flat fee, not related to value, or a fee roughly equivalent to a property tax according to value.

(6) Under ORS 310.705 et seq., tax relief is given to inventories in the form of a percentage reduction based on the Legislative Assembly's biennial appropriation for such relief, with a target reduction eventually to 50 percent of value.

(7) Under ORS 308.370 to 308.395, lands within a farm-use zone which are used exclusively for farm use and lands not within such zones which are being used and have been used for two years exclusively for farm use, are entitled to be assessed and taxed on the basis of the true cash value of farm land and not at a value based on the highest and best use.

(8) Under ORS 308.805 to 308.820, the electric transmission distribution systems of certain mutual and cooperative electric associations are taxed on the basis of a 2 percent tax on gross earnings, in lieu of ad valorem taxation.

(9) Locally assessed properties are permitted to report their inventories on the basis of an averaging method whereas centrally assessed companies must report on a year-end basis.

(10) Rural telephone exchanges are entitled to pay a 6 percent gross earnings tax in lieu of ad valorem taxation.

The question which could be raised by a common carrier in any taxing district in which such partially exempt property is located would be, whether or not the assessment of the carrier's property bore a higher ratio to the true market value of its property than the assessed valuation of the other property in the taxing district bore to its true market value. Even in averaging in the partially exempt property which might constitute a small part of the total district's valuation, it would seem that the carrier could make out a case of being taxed at a higher ratio. Additionally, within the category of "transportation property" of common carriers (both rail and truck), we find motor vehicles licensed at a flat rate in lieu of ad valorem taxation. Does this affect the ratio of assessment of the carriers' property to its market value, or is such property to be ignored?

Our next objection relates to the bill's provision that the collection of such a tax on the portion of the assessment declared to be unlawful is itself unlawful and could be enjoined. In many taxing districts in Oregon the valuation of common carriers constitutes a substantial and influential part of the total assessed valuation. Enjoining the collection of taxes against such property rather than permitting the collections with a right to a refund would seriously jeopardize the financial status of such districts.

Our next objection is to the provision which makes it illegal to collect ad valorem property taxes on such transportation property at a tax rate higher than the tax rates applicable to any other property in the taxing district. This type of legislation is directly analogous to the situation in Oregon prior to 1917 when, under the existing constitutional provisions, all taxation on Oregon property had to be at the same rate and no classification of properties for tax purposes was permissible. The voters of Oregon adopted amended constitutional provisions in 1917 which now provide for reasonable classification such as allowed under the Fourteenth Amendment of the United States Constitution. The enactment by Congress of this provision would appear to be a direct throw back to a rule of uniformity which proved to be unworkable and which has been abandoned in many states. See Newhouse, *Constitutional Uniformity and Equality in State Taxation*, Michigan Legal Studies (1959).

Finally, while we appreciate the fact that this legislation is a part of the exercise of congressional authority under the commerce clause and, therefore, in the first instance, would bestow jurisdiction upon the courts of the United States, at least in Oregon we feel that the standards of state court administration and availability of relief are of the highest. Oregon is unique in having a separate trial court, known as the Oregon Tax Court, exclusively devoted to tax appeals. Also, without enumerating any particular decisions, the cases that have come before state courts throughout the country in the last ten years concerning problems in uniformity of taxation between carriers and other types of property have demonstrated the willingness and ability of state courts to handle such a question. We see no reason to have to try such cases in the federal courts.

I trust this will be of value in your consideration of this bill.

Very truly yours,

F. H. W. HOEFKE, *Chairman.*

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Olympia, July 27, 1967.

HON. FRANK LAUSCHE,
Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: S. 927 is a bill directed towards eliminating "unreasonable and unjust discrimination" in the area of property taxation of common carrier properties. At first reading the bill seems simple and not too burdensome or harmful. And, indeed, its purpose appears highly laudable. However, upon careful consideration, I find that it may well have effects much broader in scope than its stated purpose, and that in fact it involves principles and applications which, in my opinion, may well place in jeopardy the entire

administration of property taxes throughout the country, and thus create potential havoc with local taxing districts.

I do not believe that any such power should be placed in the hands of individual taxpayers (including common carriers) in the name of uniformity. I cannot believe that this is the intention or desire of the sponsors of this measure, and urge that the Committee reject the proposal as impractical and unsound.

I will attempt to briefly describe the points of my concern for your better understanding:

1. Although the language of the bill appears to concern it with only uniformity of "ratio" and "tax rate", it would be immediately necessary under this bill for Federal courts to review and determine the correctness of not only valuation procedures and the actual valuation results for the carriers, but also the entire work of each assessing agency with respect to all other properties. Very simply, this would become necessary because the bill concerns itself with the ratio of assessed valuation of transportation property to the true market value of such property and the ratio of the assessed value of all other taxable property to the true market value of such property. If the determination of values of any properties by an assessor are not accurate, in the opinion of a common carrier, this would then, of course, alter the ratio regardless of what the records might show. The carrier could then challenge the entire property tax valuation of a given "taxing district" and the entire assessment process, including the valuation of homes, vacant lots, farms, etc.

This would be an inconceivable burden upon the court as well as an almost destructive interference with the assessment procedures. The mere possibility of this happening would place almost unlimited authority in the hands of individual tax advisers or officers of individual common carriers to disrupt these procedures.

2. My fear that the bill would make assessing officers out of Federal judges is based squarely on the language of the bill. And this represents a drastic change in present law. The present rule, as laid down by such U.S. Supreme Court cases as *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 67 L. ed 340 (1923), and *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 52 L. ed 78 (1907), is that the court will give relief only where there is an international and arbitrary discrimination. A mere difference of opinion or judgment as to values of property will not provide the basis for relief.

Contrast this rule with the following language from subsection (1) of the bill:

"(1) The following action by any State, or subdivision or agency thereof, whether such action, be taken pursuant to a constitutional provision, statute, or administrative order or practice, or otherwise, is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful: * * *" (Italic supplied.)

I am deeply concerned that this very broad statutory language is an open invitation, and perhaps even a requirement, for a Federal judge to determine *de novo* the true market value of transportation property, as well as that of all other property, in order to reach his determination of the relation of the tax ratios applied to each.

3. The power of injunction which would be established here raises serious questions of law and administration which could create unending confusion in property tax administration. Normally an injunction will not issue if there is an adequate remedy at law. The language and purpose of this bill suggests that this usual principle would be overturned, as the power is given "notwithstanding the provisions of 1341, Title 28, United States Code". This section provides as follows:

"The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

This provision is simply Congressional recognition and sanction of a practice that existed in Federal equity courts before the provision was enacted in 1937. See *Great Lakes Dredge & Dock Company v. Huffman*, 319 U.S. 293, 87 L. ed. 1407 at 1411. As a matter of fact I would ask the Committee if the railroads do not already have a remedy in Federal court under the terms of section 1341. This provision certainly is available to all taxpayers.

4. S. 927 by apparently expanding the Federal court's power of injunction and directing its use for the purposes of the bill would permit such an injunction to seriously affect and for all practical purposes substantially weaken many

counties and local districts in areas where their primary source of public revenue is from utilities and railroads. Every State in the West certainly has local jurisdictions of this nature. The time delay involved in Federal court calendars, as well as the extensive study and investigation which would be required in these cases, could hold up tax revenues for at least several years. This would be disastrous and I firmly believe uncalled for. I do believe that the principle widely accepted in this country of requiring payment of tax first and suit for refund would be better in terms of sound government than the injunctive proceeding proposed in this bill.

5. The bill offers carriers a chance and opportunity to claim entitlement to lower tax assessment by reason of State or local policy decisions which are completely unrelated to any deliberate discrimination against common carriers.

I will give you some examples of sound policies which would create this unfair and improper result. First, a number of States have adopted so-called "Greenbelt" legislation which provides for lower taxation for certain types of property. The usual principle involved is that properties used for recreational or agricultural purposes shall be taxed on the basis of their "current use" instead of "highest and best use" which is otherwise generally applied. This type of legislation insofar as it concerns agricultural lands is enacted as a matter of public policy to retain the maximum acreage possible in farm lands even though industrial or other developments in the area are forcing values and the resulting taxes up to higher levels—level which cannot be carried by farmers. Under the proposed bill a State would be unable to enact such a program for the benefit of all its people without permitting common carriers to receive the same low tax assessment. There is no reasonable public policy that could approved of this result.

Some States have also reduced the tax burden on inventories by various methods—for instance, by assessing them on 50% of full value instead of 100%—and this is done as a policy based upon what are considered to be economic facts. The policy behind reduced assessed values of inventory is considered to be one of equity; namely, that inventories are a different character of property and that it is unreasonable to tax them at the same level as real property and equipment. However, under language appearing in section 25a. (1) the courts again could very easily find it necessary to grant common carriers the right to a lower tax assessment or levy based upon the special treatment of inventory determined as a matter of special policy.

The third example is to be found in the Tolerance factors built into the ratio studies of various States. Oregon has one now and Washington is presently considering the establishment of such a Tolerance. Under this Tolerance if an assessor is claiming to be assessing at 25%, and the State Revenue Department Study finds he reaches a conclusion not more than 10% difference it will concede the possible error in judgment and conclude officially that the assessor's determination is correct. Yet in the case of State assessed properties, such as common carriers, this difference in finding in the allowance of the Tolerance could be claimed as a base for challenging the tax assessments and levies of the railroads.

6. A special word about clause (c) of subsection (1). This clause, if read literally, could be disastrous. Our counties collect property taxes at varying millage rates within the county, which is itself a taxing district. This is simply because of the fact that within the county there are all sorts of other taxing districts for which the county collects taxes. Read literally, it would appear that clause (c) could be construed to mean that transportation property cannot have a tax rate imposed upon it for collection by the county higher than the lowest tax rate applicable to any other piece of property in the county. Thus, if one school district levies only 14 mills in Thurston county, but another school district, because of an excess levy, levies 40 mills, such an excess levy would, it seems to me, offend the literal reading of clause (c). I am sure this is not the intended result. But this would not necessarily prevent a court from so construing it.

Further, I have so far assumed that the term "rate" as used in the Federal statute would be applied solely to millage rates. And if this terminology had been used in a piece of property tax legislation by your state legislature, with its presumed knowledge of our property tax system, I would have no doubt that my assumption would be correct. However, I am not so sure that this assumption would be correct with respect to a Federal statute that is meant to apply to the varying property tax system of all fifty states. Conceivably—and I am sure the carriers would so argue—the word "rate" could be construed to apply

to the dollar amount of tax per unit of true and fair value, and that varying assessment rates result in varying "rates" for purposes of clause (c). With such a construction, the "most favored nation" treatment would be given not only on the basis of millage rates, but also on the basis of assessment levels. And this could well have an even greater impact than clause (a) which deals directly with assessment levels.

There are other serious questions in my mind concerning possible interpretation of language in this bill. However, I will not encumber you with my other doubts since my deep concern is over the principal and total effect of it as I have outlined in this letter.

Before closing I do want to advise you that although at times in the past the State of Washington has assessed utility and common carrier properties at a ratio of assessed value different from that applied to other properties. This is not presently true. A number of years ago we began eliminating this discrepancy. It is now completely eliminated as a matter of fact and a matter of policy, and the carriers are being assessed at the same ratio as all other properties within each county in the State.

I urge that any Federal interest or action should be directed toward encouraging and assisting States, if necessary, to improve property tax administration to the end that all taxpayers receive uniform and equitable treatment. There is much to be done, I know. The State of Washington now has underway a broad program of this character that will take several years to fully implement. S. 927 will radically interfere with our progress and be disruptive to whatever extent it might be used in the State of Washington.

Finally, I would repeat that this bill interferes seriously, and perhaps critically, with the ability of the State governments to make policy decisions for the general public welfare, and the promotion of the overall economy by using the taxing authority to adjust burdens in ways that are not intended, and do not, in fact discriminate against common carriers as an industry.

Sincerely yours,

GEORGE KINNEAR, *Director.*

THE STATE OF NEVADA,
Carson City, Nev., July 10, 1967.

HON. HOWARD CANNON,
U.S. Senate, Washington, D.C.

DEAR HOWARD: Senator Magnuson's bill, S. 927, with co-sponsors, has been called to my attention. The bill would come before the Sub-committee on Transportation for hearing during the first week in August.

I thought it would be proper to express myself on its effects here in Nevada. A similar amendment to the Interstate Commerce Act was opposed and defeated in 1966.

The Nevada Revised Statutes require that all property be assessed at 35 percent of full cash value and railroads and utilities are assessed—centrally by the Nevada Tax Commission—uniformly at this ratio. Recognizing the difficulties of county assessors, the Nevada legislature authorized a plus or minus 2½ percent tolerance from the 35 percent assessed value ratio. The state average is now 33.11 percent. These fluctuations in ratios exist in individual taxing districts. Clark County alone has 28 such districts.

Should S. 927 become law, it would conceivably require *individual assessment* by tax district for property owners or used by a common carrier. This would create extreme hardship in levying and administering of such taxes and would be in conflict with existing Nevada Statutes pertaining to *centrally* assessed properties.

Under the provisions of the proposed law, tax payments could be withheld by the carriers if there is any variation in assessments. The proposed bill would grant injunctive relief in Federal courts. This could have a drastic effect on such counties as Lincoln, Lyon and Mineral where the railroads and utilities represent a substantial portion of the tax base, counties in which the Federal government owns 99 percent, 77 percent and 99 percent of the land. The problem is self apparent.

It is noted that the Nevada Revised Statutes provide ample administrative and judicial review and relief for the taxpayers who consider the assessed ratio inequitable, including common carriers engaged in interstate commerce and all other taxpayers.

Under these circumstances, I must express my opposition to S. 927. It appears to be another encroachment on the states and an intrusion into state functions by the Federal government.

Best regards.

Sincerely,

PAUL LAXALT,
Governor of Nevada.

THE STATE OF NEVADA,
Carson City, Nev., July 28, 1967.

Hon. HOWARD CANNON,
U.S. Senate, Washington, D.C.

DEAR HOWARD: Our previous correspondence was concerned with the effect of S. 927 on Nevada taxation.

It is my hope that the Multistate Tax Compact, when adopted by all states, will provide the necessary mechanism for correction of discriminatory tax practices in the states in which it exists.

In the interim, implementation of some Federal legislation may be necessary to achieve this. However, as explained in my previous letter, S. 927 as it now reads would have an adverse effect in the levying and administration of such taxes in Nevada.

An amendment to S. 927 to incorporate an exclusion provision for those states which assess all properties at an equal rate and have legal provisions for both administrative and judicial review and relief from inequitably assessed taxes would satisfactorily resolve this problem.

In a separate action, the Consent Bill (S. 1551) for the Multistate Tax Commission is now in the Finance Committee. Passage of this bill will eliminate the necessity for further restrictive Federal legislation regarding taxation within the separate states.

Best regards.

Sincerely,

PAUL LAXALT,
Governor of Nevada.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., July 28, 1967.

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: On behalf of the nation's trucking industry we wish to express our interest in the legislation embodied in S. 927, and similar bills, which would declare unlawful, and an undue burden upon interstate commerce, the assessment of property of any common carrier which bears a higher ratio to its true market value than the assessed value of other property subject to the same property levy.

We respectfully request that two changes be made so as to include Interstate Commerce Commission regulated motor contract carriers within the scope of the bill and so as to make it entirely clear that all motor carriers subject to economic regulation by the Commission are covered.

These changes are indicated by the following suggested substitute for the language of line 8 of page 2 of the bill: "owned or used by any common or contract carrier subject to economic regulation pursuant to the provisions of the Interstate Commerce Act".

The suggestion that contract motor carriers be included stems from the fact that in many areas of regulated motor carriage the common and contract operations are quite similar and entitled to the same protection sought to be provided by this bill. I refer particularly to operations such as those of the automobile transporters and the tank truck operators.

The purpose of the other suggested change (spelling out the name "Interstate Commerce Act") is simply to make it clear that the provisions of the bill apply to parts of the Act other than part I in which the proposed amendment to section 25 is to appear.

We also suggest that the next to last line of the description of the bill be changed by inserting "and contract" following "common".

We are grateful for your consideration of our position in this matter.

Very truly yours,

W. A. BRESNAHAN.

COMMONWEALTH OF VIRGINIA,
GOVERNOR'S OFFICE,
Richmond, August 2, 1967.

HON. FRANK J. LAUSCHE,
*Chairman, Subcommittee on Surface Transportation,
Senate Commerce Committee,
Washington, D.C.*

DEAR SENATOR LAUSCHE: Information has been received that your subcommittee will hold hearings on S. 927 on August 7 and 8.

This statement in opposition to the bill is respectfully submitted.

This bill, if enacted, would "make unlawful, as unreasonable and unjust, discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common carrier property". . . .

Congressional legislation of this kind is unprecedented, and the bill, if passed, would cause interstate common carriers to bring all suits involving alleged discrimination in property tax matters in the already overcrowded district courts of the United States, instead of in the appropriate State courts.

The bill is so written that the district courts would be compelled to ascertain, not only "the true market value" of common carrier "transportation property," but "the true market value of all other property (sic) in the taxing district subject to a property tax levy." It would be necessary first to establish these two sets of "true market" values and then it would be necessary to ascertain to the extent possible the ratios of the assessed values to the true market values. Thus a heavy burden would be imposed on the Federal district courts respecting matters as to which there may be, and are, wide differences of opinion. Moreover, the bill evidences a backward step in ignoring the vital concept of reasonable and fair classification of property for tax purposes.

The provisions of clause (2) of the bill relating to district court injunctions are not only radical in principle but in application would disrupt the finances of the localities and cause serious trouble at the local level without giving localities any time within which to make orderly adjustments.

The State Corporation Commission, a department of our State government, assesses for State and local purposes the physical properties of railroads and public utilities. For more than sixty years Virginia has had a dual method of taxing public service corporations generally. The franchises of such corporations are taxed for State purposes, and their real estate and tangible personal property (except railroad rolling stock which is taxed by the State) are assessed for local taxation, without including franchise value or going concern value. The Commission, from 1927 through 1966, used a State-wide equalizing factor of 40% in arriving at the assessed value of the real estate and tangible personal property of railroads and public utilities not local in nature.

The Virginia General Assembly, recognizing the changes that have taken place since the State-wide equalizing factor of 40% was first used, enacted legislation in 1966 (effective in 1967 and succeeding years), which has the effect of gradually converting over a period of years the ratio used in the assessment of the physical properties of railroads and public utilities to the local ratio in the political subdivision in which particular property is located. By spreading the process of conversion to the local ratio over a number of years the consequences of a sudden disruption of the means of financing local governmental services are given due consideration.

The statutes of Virginia provide a speedy and effective remedy for the correction of alleged erroneous assessments of the properties of railroads and public utilities operating in Virginia: (1) by applying to the State Corporation Commission for review, and (2) by appealing as a matter of right directly to the Virginia Supreme Court of Appeals, the State's highest court.

Existing jurisdiction and powers of the courts, State and Federal, are adequate to provide just relief on a showing of discrimination.

In our opinion, the enactment of S. 927 or any related bill is unnecessary and would be unwise. We hope, therefore, that your subcommittee will not give favorable consideration to S. 927.

Sincerely yours,

MILLS E. GODWIN, JR.

STATE OF OHIO,
OFFICE OF THE GOVERNOR,
Columbus, August 3, 1967.

HON. FRANK J. LAUSCHE,
U.S. Senator, Senate Office Building, Washington, D.C.

DEAR FRANK: One of the measures now before you in the Commerce Committee is S. 927. This bill would amend the Interstate Commerce Act relative to property tax assessments of common carrier property.

A disturbing feature of S. 927 is the granting of jurisdiction to the federal courts over any tax litigation involving common carriers. Such an extension of judicial authority would be incongruous with the taxing power the states have over common carriers. This judicial provision is not in Ohio's best interest and I urge you to oppose it.

Sincerely,

JAMES A. RHODES, Governor.

ASSOCIATION OF OIL PIPE LINES,
Washington, D.C., August 4, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to S. 927, introduced by Senator Magnuson for himself and ten other members of the Committee on Commerce, on which your Subcommittee will hold hearings August 7 and 8, 1967. S. 927 would make it unlawful, as an unjust discrimination against and an undue burden upon interstate commerce, for a state or subdivision thereof to assess property owned or used by an interstate common carrier at a higher rate than all other property in the jurisdiction is assessed.

The Association of Oil Pipe Lines, which is composed of substantially all of the interstate common carrier oil pipelines in the United States, supports this proposed legislation because it believes the bill is grounded in equity and justice. The Association urges your Subcommittee to act favorably on S. 927.

It is respectfully requested that this letter be included in the printed record of the hearing on this bill.

Sincerely yours,

J. D. DURAND.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., August 7, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR FRANK: I am pleased to submit herewith, for the record, the statement by West Virginia State Tax Commissioner G. Thomas Battle on S. 927, presently under study by your subcommittee.

With good wishes.

Sincerely yours,

ROBERT C. BYRD, U.S. Senate.

STATE TAX DEPARTMENT OF WEST VIRGINIA,
Charleston, W. Va., August 3, 1967.

HON. ROBERT C. BYRD,
U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: Hearings have been scheduled before the Subcommittee on Surface Transportation, Committee on Commerce, Honorable Frank J. Lausche, Chairman, August 7 and 8, 1967, on S. 927. The bill deals with the question of property tax assessments of common carrier property, and declares that certain practices constitute unreasonable and unjust discrimination against and an undue burden upon interstate commerce.

As Tax Commissioner of West Virginia, I have joined with several other states in presenting the attached statement in opposition to the enactment of this measure. I believe the statement is self-explanatory, and I supply it to you for information purposes only.

The main reason for my addressing this letter to you is to point out certain particular aspects of the West Virginia situation and the detrimental effect that this measure could have, particularly on local government finances.

As you are well aware, the tax limitation amendment to the Constitution (article 10, section 1) adopted in 1932 prescribes maximum taxes that can be assessed in any one year on various classes of property. The maximum ranges from fifty cents on each one hundred dollars of value on agricultural personality, accounts receivable, stocks, bonds and similar intangibles (Class I) to two dollars on each one hundred dollars of value on property situated within municipalities other than residential and farm, real estate and tangible and intangible personal property (Class IV).

S. 927 deals with transportation property owned or used by any common carrier subject to the Interstate Commerce Act engaged in transportation of persons or property in interstate commerce, and would declare as being unlawful "(c) the collection of any ad valorem property tax on such transportation property at a tax rate higher than tax rates applicable to any other property in the taxing district." This provision appears to require transportation property within this category to be taxed at the lowest rate applicable within the jurisdiction which would be the rate established for Class I property.

Considering just the major interstate railroads, for the 1967 assessment year, the value of Classes III and IV property of six interstate railroads totals \$269,950,000. It is easy to see what the variance in property tax revenue would be if this property were taxed at the Class I level as opposed to the Class III or IV level which rates are three and four times that of Class I. Since the great majority of this money would go to counties, municipalities and school boards, the loss would be particularly significant. In addition, this would present an inequitable situation in that people owning identical property which was not devoted to interstate commerce would continue to be subject to the higher rate of taxation. In view of the serious financial problems that are facing local government today, the adoption of any legislation which would impair or restrict their income sources could be very damaging.

With regard to the provision of S. 927 declaring unlawful the assessment of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio of all other property in the taxing district to its true market value, I think the West Virginia Constitution has already been interpreted to apply in this way. The West Virginia Supreme Court of Appeals in the case of *In Re Assessment of Kanawha Valley Bank*, 144 W. Va. 346, 109 S.E. (2nd) 649 (1959), held that article 10, section 1 of the Constitution not only required uniformity of taxation within classes of property, but also prohibited the assessment of one class of property at a higher proportion of its true value than other property within the taxing district. You will recall this case struck down the assessment of bank stock at 100% of its value when the evidence showed that other property within Kanawha County was being assessed at 40% of value. Since the time of this decision, efforts have been made to equalize assessments within counties, and the Board of Public Works which of course values utility property has been using the statewide ratio of assessments as a guide in fixing utility property assessments.

Because the Board has had an unusually busy schedule with budgetary matters, I have not had an opportunity to discuss this bill with them and I do not propose to speak for them. I believe that I can say, however, that in West Virginia, every effort is being made to equalize the property used in interstate commerce at an assessment level comparable to other properties. As far as I know, there have not been serious claims of discrimination in this regard. Because of this fact and because of the hardship that would be caused by using the lowest tax rate on property used in interstate commerce, I would respectfully suggest that the passage of S. 927 would not be in the best interest of the state of West Virginia.

If you wish to have further details regarding the possible impact of this measure, I would be glad to try to provide it upon request.

Sincerely yours,

G. THOMAS BATTLE,
State Tax Commissioner.

STATE OF IOWA,
STATE TAX COMMISSION,
Des Moines, August 7, 1967.

HON. FRANK J. LAUSCHE,

*Chairman, Subcommittee on Surface Transportation, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SIR: Enclosed herewith please find copies of a statement relative to S. 927 and representing the views of the Iowa State Tax Commission.

It is requested that these copies be handled in the customary manner where testimony is presented in writing.

Very truly yours,

LYNN POTTER,
Vice Chairman.

S. 927

S. 927 would propel the central government into the field of assessment of property for ad valorem taxation—a field generally reserved to the states which, in most cases, assign this source of revenue to local units of government.

The port of entry for the central government is its constitutional duty to regulate interstate commerce. S. 927 sets out to accomplish four principal aims: (1) to prevent establishing taxable value of the property of interstate common carriers at a higher ratio to its true market value than the taxable value established for other property bears to the true market value of other property within any taxing district; (2) to prevent collection of any amount of tax which is levied on that portion of the taxable value of property of interstate common carriers that represents taxable value in excess of the prescribed taxable value under conditions of number (1) above; (3) to prevent collection of any ad valorem tax on such transportation property of common carriers at a higher rate than is applied to ANY other property within the taxing district; and (4) to establish the right of common carriers to appeal from the assessment of a taxable value upon their property direct from the assessing authority to the Federal courts without first seeking redress of alleged grievance according to the procedures set up by state law for redress of grievance.

Any sensible discussion of this proposal is most likely to be accommodated by discussion of the purposes of the proposal. For this reason the four principal purposes are taken up one by one in their order.

I. EQUAL RATIOS OF ASSESSMENT

Since state laws generally and common law historically prevents discrimination in setting assessed or taxable values of property, the enunciation of purpose number one brings up certain questions:

Is subpart (a) of subsection 1 of proposed section 25a (in which purpose number one is delineated) necessary? Since discrimination within a class is well known to be an illegal action with reference to the assessment of property for the collection of taxes, repetition of this admonition appears redundant.

Is there factual evidence to show that the taxing districts of the United States have ascribed a higher ratio of true market value as assessed value of common carriers than is ascribed to other property within the taxing districts? If such factual evidence exists, the states have long hence provided for the affording of redress of grievance to those whose property is assessed disproportionately higher. In Iowa this redress procedure is accommodated by: (a) an appeal to the district board of review; (b) an appeal to the district court of the state; and (c) further appeal to the Supreme Court of the state. It is illegal in Iowa to assess one property at a higher ratio of its value than other property in the same district or even in the state is assessed for ad valorem taxation. Iowa affords redress of grievance for those who believe they have been assessed unfairly, whether the assessment be too high or too low. Other states undoubtedly are prepared to show that their statutes are similarly preventive of unfair assessments. Where states have statutes preventing unfair assessments, is there a necessity for a Federal statute covering the same subject?

II. TAXES LEVIED ON EXCESSIVE PORTION OF TOTAL TAXABLE VALUE ARE NOT COLLECTIBLE

The second principal purpose, dealing with the collection of any tax on the proportion of the assessed or taxable value that is excessive, seems to presuppose that an excessive taxable value may be ascribed to property of common carriers without their having recourse to redress of grievance caused by such excessive assessment of taxable value. So long as it is illegal to place an excessive taxable value on property, how, then, can a tax be collected on that portion of the taxable value which is excessive. The time to prevent excessive collection of tax is at the time when the taxable value is established and that taxable value is not established finally until owners of common carriers and all other property owners are afforded a redress of alleged grievance if they believe that their taxable value has been set too high. They are granted sufficient time and provided a place and a procedure for appealing from what they may believe to be an excessive taxable value placed upon their property.

This principle seems to have evolved (within S. 927) into a declaration that if at any later date, long after the assessed "excessive" value has been established and such "excessive" amount determined, the tax on that part of the value declared to be excessive cannot be collected. Again, it is clear that the taxable value of property is subject to review by administrative authority and subject to review by the various courts of the state(s) in which the property is located. S. 927 would have the effect of permitting an appeal alleging the excessive taxable value long after the time set for such an appeal and even after the tax itself had been collected. In short, it evolves into a situation in which there is no limitation of time for appeal against an alleged excessive assessment of taxable value of property.

This seems to be a departure from the time honored limitation that an aggrieved party has a specific period of time in which to seek redress of his grievance. Since this unlimited time for appeal is afforded only to "transportation property owned or used by any common carrier subject to this Act", it is, in fact, placing such common carriers in a position superior to the position of owners of other property assessed in the same taxing district.

III. LIMITATION OF TAX RATES ON COMMON CARRIER PROPERTY

S. 927 would prevent taxation of common carrier property at a higher rate than any other property within the taxing district. On the surface this principle may appear to be sound and reasonable. In this respect, however, limitations of rates of taxation on intangible property are universally lower than rates of taxation on tangible property; be it personalty, realty, or common carrier property.

Further complications are experienced upon a realization that tangible property is generally considered to be either personal property or real property. For the sake of assessment, common carrier property and utility property are not subject to a distinction between the personalty of the common carrier or utility and the realty of the common carrier or utility. In recent years states have considered a tax rate limitation upon the residential property of aged persons.

Taking into recognition the practical facts relating to the rates of taxation, it can only be concluded that under S. 927 the common carrier seeking to limit its tax liability would select the lowest rate of tax on any property in the taxing district and insist that the levy of tax on the common carrier property not exceed the levy applied to any property of any kind or class in that district. This privilege of selection of the lowest rate of levy on any property of any kind or class in the district as the maximum rate of levy on the property of the common carrier would place the common carrier property taxpayer in a position superior to that of utility taxpayers such as telephone systems, pipeline systems, electric utilities, and telegraph systems as well as private heat and water utilities, and likewise superior to the position of owners of other privately owned tangible property.

Had subpart (c) of subsection 1 of proposed section 25a provided that transportation property not be taxed at a higher rate of tax than is applicable to like and similar property within the same class or kind, some semblance of equity might have been retained. Under the wording of the Act, however, the right to be taxed at the lowest rate applicable to any property in the taxing district is the establishment of a special privilege for common carriers to the detriment of all other taxpayers having tangible property of a like or similar nature.

IV. DIRECT RIGHTS OF REDRESS OF ALLEGED GRIEVANCE BEFORE FEDERAL COURTS

While all other owners of property in the taxing district would continue to be subject to the administrative and judicial review of the assessed value of their property in accordance with the state statutes, owners of common carrier property would be blessed with the right of direct appeal from the assessment to the Federal courts. If common carrier property were set apart as being excessively controlled by government and consequently entitled to special treatment, perhaps such a special redress of grievance procedure might be justified. Even then, it would place them in a position of enjoying the markets of a state without the corresponding requirement to abide by the laws of that state. The whole notion of direct Federal court jurisdiction presupposes that the states are sponsoring a discrimination against the common carrier taxpayer. If this be true, then access to the Federal courts already exists and there is no need for subsection 2 of S. 927. If common carriers merely wish to have direct access to the Federal courts, then S. 927 grants that wish without granting similar rights to owners of other property.

* * * * *

S. 927 establishes: first, special privileges for common carriers not shared by other owners of property; second, it provides special rates of taxation on property of common carriers; third, it provides a special system of judicial review of the taxable value of common carrier property; and finally, the legitimate privileges it provides are already present in the statutes of many states and are patently therefore uncalled for in Federal legislation.

[Telegram]

LINCOLN, NEBR., August 7, 1967.

Senator LAUSCHE,

Chairman, Subcommittee on Transportation, Senate Commerce Committee, U.S. Senate, Washington, D.C.

SENATOR LAUSCHE AND MEMBERS OF THE COMMITTEE: I wish to convey to your committee my opposition and that of Governor Norbert Tieman to S. 927. Nebraska has joined in the statement being presented by Mr. Charles F. Conlon, Executive Secretary, National Association of Taxpayers. Uniformity of assessment is a constitutional and statutory requirement of the State of Nebraska. This requirement is being met to the best of our ability and that of our courts. Certain common carriers, particularly railroads, have asserted inequality but administrative and judicial remedies have not been pursued. Remedies are more than adequate as well as speedy, in our State. Our feeling is that S. 927 seeks to solve a nonexistent problem, and if there were a problem, our belief is that the solutions proposed are inadequate and unworkable. In addition S. 927 represents an unwarranted intrusion upon the rights of the States to provide for local government.

MURRELL B. McNEIL,

State Tax Commissioner, State of Nebraska.

STATE OF FLORIDA,
OFFICE OF THE COMPTROLLER,
Tallahassee, August 14, 1967.

Hon. FRANK J. LAUSCHE,
U.S. Senate
Washington, D.C.

DEAR SENATOR LAUSCHE: Thank you for your courteous letter offering me the opportunity of appearing before your Surface Transportation Subcommittee to testify in opposition to S. 927.

Unfortunately, I was out of the city on state business and unable to take advantage of your generous offer. I would, however, appreciate the opportunity of submitting to your committee reasons for the strong opposition of Florida's government and business leaders to this legislation.

I would be grateful if this position, contained in the attached report, is allowed to become a part of the records of your subcommittee on S. 927. Florida's Senior Senator, Honorable Spessard Holland, will officially present this report to your committee.

With best good wishes, I am,

Most sincerely,

FRED O. DICKINSON, Jr.

STATEMENT OF COMPTROLLER OF FLORIDA FRED O. (BUD) DICKINSON, JR.

Basically, this legislation is attempting to close a barn door that already is closed in Florida. It would be superfluous, repetitious legislation from the federal government.

The intent of the bill purportedly is to eliminate "discrimination" in the taxing field against interstate common carriers.

The fact that Florida, by law which has been specifically upheld by Supreme Court action, does not authorize or permit such discrimination is in itself reason enough to be opposed to the move for duplicative federal legislation.

More importantly, however, is that such legislation once again is a demonstration of a move to usurp an area of state responsibility. Federal encroachment on states' rights are obnoxious even when states are lagging in performing their own responsibilities. Such Federal encroachment is intolerable when the state is properly performing its duties and responsibilities in this area as is the case in Florida.

Chapter 195 of the Florida Statute place the entire responsibility for the assessing of railroads and telegraph companies for ad valorem taxing purposes in the hands of the Florida Railroad Assessment Board. This board's membership includes the Comptroller as chairman, the State Attorney General and the State Treasurer.

Each of these officers, incidentally, is elected on a statewide ballot and is responsive to the desires of the taxpaying public for fair and equitable assessment and taxation for everyone.

The Florida Supreme Court has held that local county tax assessors are completely without jurisdiction to determine the assessed value of these types of industries, thus assuring a uniform and equal assessment by one statewide assessment body.

In addition to these compelling reasons, Florida gives unqualified endorsement to the following points of opposition which have been spelled out by the National Association of Tax Administrators as a consensus representation of opposition from taxing officials throughout the Nation:

1. There is absolutely no need for S. 927 because there are existing adequate remedies in the courts of the states to deal with alleged discriminatory assessments (and, and I have stated, Florida courts have dealt firmly with the matter).

2. The bill, for all practical purposes, would restrict the powers of sovereign state legislatures to classify property for tax purposes.

3. The bill, in fact, involves a complicated procedure which would of necessity require federal courts to review the valuation of carrier property in order to determine whether valuation exists.

Use of the proposed remedy would add a further burden to the heavy federal court dockets. In addition, valuation for ad valorem tax purposes is a state function and federal courts should not be allowed to intervene in this process except in extraordinary cases.

AMERICAN BAR ASSOCIATION,
Chicago, Ill., August 16, 1967.

Hon WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce, Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: At its recent meeting in Honolulu, the House of Delegates of the American Bar Association adopted the following resolution upon recommendation of the Association's Standing Committee on Commerce:

"Resolved, that the American Bar Association go on record supporting legislation which would declare unlawful and an undue burden on interstate commerce taxes levied by any taxing district on transportation property owned or used by a common carrier at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the taxing district, in the form of S. 927 pending in the 90th Congress."

This resolution is being transmitted for your Committee's information and whatever action may be appropriate.

We would appreciate your advising Donald E. Channell, Director of the American Bar Association Washington Office, 1705 DeSales Street, if hearings are scheduled on the subject of the resolution.

Sincerely yours,

WM. REECE SMITH, JR., *Secretary.*

RAILWAY PROGRESS INSTITUTE,
August 18, 1967.

HON. FRANK J. LAUSCHE,
*Chairman, Subcommittee on Surface Transportation, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The Railroad Progress Institute urges the enactment of S. 927, the bill which would grant common carriers, like the railroads, more equitable treatment in property tax charges by state and local authorities.

The Railroad Progress Institute, the national association of the railway equipment and supply industry, feels strongly that any discriminatory charges should be eliminated so that the nation's railroads can be in a better position to deliver the fullest benefits of their operations to the American public.

We understand that in recent years taxes paid by the railroads average more than one hundred million dollars a year, as compared with the taxes they would have paid if taxed on the same basis as other property owners in the same tax districts. These charges have increased the property tax bill of the nation's railroads by 50 percent and deprived the railroad industry of funds which otherwise could have gone into providing better service.

The Railway Progress Institute supports all efforts to enable the nation's railroads to continue to modernize and so provide better service to the public. The record of technological improvements in the last five years is a dramatic one. We as suppliers, know how today's modern railroads use the very latest in techniques under the leadership of today's modern railroad managers.

An Interstate Commerce Commission report of August 1, 1967 (on proposed railroad freight increases) stated that capital outlays for new equipment and services demonstrate a "vigorous application of technological developments to railroad transportation".

These advancements cost money. It is the plea of the Railway Progress Institute that the railroads be helped in their efforts to finance continuing capital investment in rolling stock, track and other elements of modern railroad systems by the reduction of tax overcharges, which the bill before your committee would provide.

In addition to substantially improving freight service, the railroads have been passing on savings from modernization in the form of reductions in the freight charges. While recognizing the immediate need of the railroads for additional revenue, the ICC found in their report that reductions in freight charges through modernization, have had—and still have—an anti-inflationary effect on the economy.

We ask that the Surface Transportation Subcommittee of the Senate Committee on Commerce consider favorably S. 927 in the interest of helping today's modern railroads serve the nation even more efficiently in the years ahead.

Sincerely,

NILS A. LENNARTSON.

CONTROLLER OF THE STATE OF CALIFORNIA,
Sacramento, October 13, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Senate Commerce Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: You will recall that Mr. Charles F. Conlon, Executive Secretary, National Association of Tax Administrators, appeared as a witness and filed a written statement in opposition to S. 927 at hearings before your subcommittee on August 7 and 8, 1967. California is listed in Mr. Conlon's written statement as one of the states joining in his statement.

After reviewing statements filed by witnesses who appeared in support of the enactment of S. 927, I think it appropriate to reiterate my own and the California State Board of Equalization's endorsement of Mr. Conlon's analysis of and objections to S. 927. We believe that with one exception, Mr. Conlon's oral testimony and written statement adequately refuted the arguments presented in support of such legislation.

The one exception to which I refer is an accusation against the California State Board of Equalization by Mr. James N. Ogden, Vice President and General Counsel, Gulf Mobile and Ohio Railroad. This appears in the appendix to his written statement as follows:

"Forty-eight separate suits challenging the level of assessment railroad property for the tax year 1958 were filed in 48 separate California Superior Courts by

Southern Pacific Company and its rail affiliates against 48 counties and various cities in California, pointing up the cumbersome and inadequate appeal procedure prevailing in the State. The railroad voluntarily dismissed these suits without prejudice on July 1, 1959, on an agreement by the California State Board of Equalization to equalize railroad assessments at the rate of 2½% per year. However, the California State Board of Equalization has not equalized the railroad assessments as agreed to, according only a fraction of the relief promised. Eight years later the railroad assessments in California remain substantially higher than others."

I shall respond seriatim to each of the allegations made by Mr. Ogden.

1. The fact that Southern Pacific Company and its rail affiliates chose to file separate suits challenging the level of assessment of railroad property for the year 1958 in 48 counties and cities in California does not, as alleged, establish that California's judicial procedures are cumbersome and inadequate.

Property owned or used in this State by railroads and other privately owned public utilities is centrally assessed by the California State Board of Equalization for purposes of local property taxation. The aggregate assessed value of the operating property is then apportioned by formula to each component of the unitary property. No adjustment is made, or is provided for in our statutes, for differences, if any, in assessment ratios of the several counties.

From the foregoing, it should be clear that if Southern Pacific had successfully challenged the level of assessment of its operating properties in any one county, the decision would necessarily have been reflected in the central assessment of its statewide operating properties by the State Board of Equalization in succeeding years.

2. Although Southern Pacific did voluntarily dismiss its suits, my colleagues on the Board of Equalization who were in office during the period in question assured me that there was no agreement between the Board and Southern Pacific relating to the dismissals, as alleged by Mr. Ogden. Nor has any official of Southern Pacific, or of any other railroad, called my attention to any such agreement.

3. The denial of the existence of an agreement such as alleged by Mr. Ogden is not to say that there has been a failure to recognize the need for continual efforts to equalize State assessments of railroad and other utility property with local assessments of common property. Differences in the level of State assessments and local assessment, we believe, have largely resulted from the liability of local government to keep assessments current with the rapid inflation of property values in California during the postwar period, rather than an intentional discrimination against State assesses. The Legislature, the State Board of Equalization, and county governments are all moving to eliminate this and other historical deficiencies in the property tax.

Starting some years ago, the State Board of Equalization began to gradually lower the assessment level of all State assessed unitary properties. During the same period, through the exercise of its constitutional and statutory intercounty equalization powers and duties, the Board has made triennial appraisal surveys within each county and has taken affirmative action to raise the local assessment level of common property. Concurrently, county assessors have accomplished much in the way of developing techniques and practices designed to keep their assessments current with economic trends. To further accelerate the improvement of property of tax administration in California, the Legislature has made studies of State and local assessment practices and in 1966 substantially revised the statutes relating to property taxation.

Among other things, the law as amended in 1966 now requires that county assessors shall assess all property subject to general property taxation at a publicly announced ratio, which shall be between 20 percent and 25 percent of full cash value. Beginning in 1971, all assessors are required to assess such property at 25 percent of its full cash value. With few exceptions, county assessors this year announced, and assessed at, a ratio of 25 percent of full cash value. The statutory amendments of 1966 also substantially increased the State Board of Equalization's supervisory authority over county assessors. These changes, together with the board's continuing intercounty equalization surveys, should in the future prevent any further erosion of local assessment levels.

4. Although I am not prepared to state categorically that State and local assessments are fully equalized, I do not hesitate to state that much progress has been made in this direction. With my fellow members of the Board of Equalization, I believe that substantial equality is being accomplished in California as rapidly as practical, and for that matter, as fast as our State assesses would wish,

having in mind the adjustments which must be made by many local governments in which State assessed property forms a major part of the tax base.

Aside from the question of discrimination, we in California do not believe that a case has been made for granting jurisdiction to Federal Courts in the event of property tax litigation involving an interstate carrier, a privilege not granted to other State and local taxpayers. For all of the foregoing reasons, we respectfully suggest that this legislation is neither necessary nor desirable.

I respectfully request that this letter be made a part of the proceedings of the subcommittee.

Cordially,

HOUSTON I. FLOURNOY,
State Controller.

WESTERN STATES ASSOCIATION OF TAX ADMINISTRATORS,
Carson City, Nev., October 1, 1967.

Hon. W. G. MAGNUSON,
*Chairman, U.S. Senate Commerce Committee,
Senate Office Building, Washington, D.C.*

DEAR SENATOR MAGNUSON: The Western States Association of Tax Administrators at the concluding session of their 16th annual conference, held in Salt Lake City, Utah, on September 8, 1967, passed Resolution VI.

I am enclosing a copy of Resolution VI and a copy of The Report (part I), Committee on Railroad and Utility Valuation of the Western States Association of Tax Administrators, for your favorable consideration.

Very truly yours,

JAMES J. NOEL, *Vice President.*

RESOLUTION VI UNANIMOUSLY ADOPTED AT THE SIXTEENTH ANNUAL CONFERENCE OF THE WESTERN STATES ASSOCIATION OF TAX ADMINISTRATORS, SALT LAKE CITY, UTAH, SEPTEMBER 5-8, 1967

Whereas Senate Bill 927 is presently being considered by the United States Congress which deals with the assessment of transportation property of common carriers, and more particularly the ratio of assessments of such property to the true market value of the property as compared to other property, and the tax rate applied to such properties as compared to the tax rates of other properties, and

Whereas the several states have taken, and are taking effective legislative and judicial steps towards the equalization of property tax assessments of common carriers and other types of property; and

Whereas the Western States Association of Tax Administrators has a special Committee on Railroad and Utility Valuation studying and investigating solutions to the problem in this field of taxation and this Committee, after diligent study, has presented to the Association Part I of its recommendations for action by the several states;

Whereas the Western States Association of Tax Administrators is concerned with the impact of Senate Bill 927 upon state and local administration of property taxes, and has concluded that such proposals, if enacted, would seriously jeopardize state and local authority to resolve tax problems at the local level, and state and local authority to classify property within the state: Now, therefore, be it

Resolved, That the Western States Association of Tax Administrators at its Sixteenth Annual Conference in Salt Lake City, Utah held September 5-8, 1967, does hereby adopt a policy in opposition to the Federal legislation typified by Senate Bill 927 and encourages the states individually and cooperatively to take positive steps toward administrative and legislative solution of any existing problems in this area as recommended by studies of the Committee on Railroad and Utility Valuation of this Association and directs this standing committee to expand its studies to include the problems and issues covered by this bill; and be it further

Resolved, That the Secretary of this Association be directed to send copies of this resolution to United States Senators, Warren Magnuson of Washington and Frank Lausche, of Ohio, and to the members of the Senate Commerce Committee, accompanied by copies of the report from the Committee on Railroad and Utility Valuation.

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C., August 11, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Senate Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In the interest of equity and the preservation of our essential common carrier transportation system, the Chamber of Commerce of the United States supports the objectives of S. 927.

We understand the objectives of this bill are to prohibit the taxation of transportation property owned or used by a common carrier in interstate commerce at values bearing a higher ratio to true market values than that computed on other property subject to the same tax levy.

Present practices, at least in some areas, of assessing regulated carriers at a higher ratio to true market values than computed on other property subject to the same tax levy is clearly discriminatory. We believe that federal legislation is necessary to cure this situation.

I respectfully request that your Subcommittee give favorable consideration in these views and that you will make this letter a part of the record of your current hearings.

Cordially,

DON A. GOODALL,
General Manager, Legislative Action.

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., August 14, 1967.

HON. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN LAUSCHE: On behalf of the Board of Directors of the Transportation Association of America, I should like to express TAA's strong support of S. 927, which is the subject of current hearings before your Subcommittee. This bill would make it unlawful—as an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce—for a state to assess or tax property of an interstate common carrier on a higher basis than other property in the same taxing district. At the same time, this bill would provide a means by which such carriers could go into the Federal district courts, if necessary, to seek relief against such discriminatory practices.

For the record, TAA is a national transportation policy organization composed of transport users, investors, and carriers of all modes who work collectively to develop sound national policies aimed at the creation of the strongest possible transportation system under private enterprise. Policy positions, prior to final vote by the 115-member TAA Board of Directors, are first studied carefully by eight permanent Panels composed of approximately 350 leaders from user, investor, air, freight forwarder, highway, oil pipeline, rail, and water carrier fields respectively.

It should be pointed out that all eight of these TAA Panels recommended favorable action by the TAA Board on a policy proposal that covers the two basic principles incorporated in S. 927, which are as follows:

The discriminatory taxation of property of interstate common carriers should be declared unlawful by the Congress as an unreasonable and unjust burden on interstate commerce.

Provision should be made whereby an interstate common carrier can seek relief through the Federal district courts from any such discriminatory tax practices at the state or local level.

While this problem is of concern to all interstate common carriers—particularly those with extensive rights-of-way such as railroads and pipelines—the strongest case in support of the need for relief such as proposed by S. 927 can be made by the railroads. Several studies of state practices in taxing property owned by interstate railroads show clearly the high degree of discrimination. This is evidenced by the fact that during the "sixties" the excess taxes paid—based on what the railroads would have paid if taxed on the same basis as other property owners in the same tax districts—averaged more than \$100 million a year.

An objective analysis of this serious problem was made by a special study group for the Senate Commerce Committee—see Chapter 1 of Part VII of the so-

called "Doyle Report" on "National Transportation Policy", January 3, 1961—which clearly pointed out the need for remedial legislation such as S. 927.

Objective research also supports the conclusion that Congress has the constitutional authority to prohibit states, counties, or municipalities from unduly discriminating against interstate commerce in this tax area. This legal point has been researched thoroughly by two recognized authorities in this field, Paul J. Hartman, and Paul H. Sanders, both Professors of Law at Vanderbilt University. Their conclusion, supported by a detailed analysis of this constitutional question in the May, 1966, issue of the "ICC Practitioners Journal", is that "it can be stated flatly that there is no authority that lends any substantial support to the proposition that Congress would lack power to enact legislation prohibiting discrimination in tax assessment of interstate carriers."

While judicial relief can be sought by carriers at the state level, the record indicates that this is a long, drawn-out process with generally unsatisfactory results. One example of the kind of problem faced is illustrated by a recent editorial in the July 17, 1967, issue of RAILWAY AGE, which stated in part:

"... In Nebraska, railroads are assessed at the state level. All other property, including the property of utility companies, is assessed locally. For some years, there's been a statutory requirement that assessments be equalized at 35% of market value. Railroads had to go to court to get their assessments put on a uniform basis but, after they won the case, everything was relatively rosy—for a while. Then it developed that with market values increasing and local assessments remaining static, the ratios were declining: Railroad property stayed at 35%, but the ratios on locally-assessed property slipped to 27% or 28%.

"The state tax commissioner, noting the slippage, tried to make correction by ordering blanket increases to get assessments back up to the proper ratio. But he ran into trouble from a number of counties and, eventually, the state supreme court ruled against him. That brought the matter home to the one-house Nebraska legislature, and the lawmakers approved a bill under which the tax commissioner would check local ratios before certifying railroad assessments for tax purposes. If he found, for instance, that local assessments were on a 25% basis, he'd debase the railroad assessment to that level.

"The governor vetoed the bill. And despite the fat margin by which the measure passed—34 to 5—there's apparently no thought of over-riding the veto ..."

An exhibit presented on March 1, 1966, to the House Interstate and Foreign Commerce Committee by a witness for the Association of American Railroads in support of legislation similar to S. 927 listed 20 states (exclusive of Nebraska) that were assessing railroad property on a higher basis than other property in the same taxing districts. The resulting property taxes of \$147 million paid by the railroads in 1964 to these 20 states were nearly double the \$75 million that would have been made if the assessments had been made on an equitable basis.

The removal of such extensive discrimination by litigation at the state level is obviously a time-consuming and costly procedure. Passage of S. 927 would provide a uniform and simplified procedure by which interstate carriers could seek relief in this tax area with the minimum of delay and cost. Such action would also, in our opinion, stimulate corrective action at the state and local levels and thus reduce the number of property tax litigations.

For the reasons set forth above, we believe passage of S. 927 would be in the public interest and would help materially in strengthening out interstate common carrier system. Therefore, we urge that your Subcommittee take favorable action on this legislation at the earliest possible date.

We request that this letter be made a part of the official transcript of the hearings on S. 927.

Sincerely,

HAROLD HAMMOND.

GULF, MOBILE & OHIO RAILROAD CO.,
Mobile, Ala., November 14, 1967.

Hon. FRANK J. LAUSCHE,
Chairman, Subcommittee on Surface Transportation, Senate Commerce Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR LAUSCHE: By reference, I have received a copy of letter to you from Mr. Houston I. Flournoy, Controller of the State of California, dated October 13th, concerning S. 927.

The nature of Mr. Flournoy's letter involves more than mere opposition to this bill, and I trust it will be in order to provide you with some additional information concerning the matters on which he has expressed himself.

The information concerning the 1958-59 Southern Pacific litigation had been received from the railroad in question and, of course, I cannot do more than assure you that it was passed on to your Committee in exactly the same manner and tone as received. However, in order to get the complete picture I have taken the liberty of furnishing a copy of Mr. Flournoy's letter to counsel and tax executives for Southern Pacific who handled their California property tax litigation and requested their comments.

They reiterate that the information concerning the California railroad property tax situation and this litigation, which they furnished to me and which was, in turn, presented by me at the hearings before your committee, is absolutely correct. They indicate that while there was no formal written agreement there was a definite understanding that the Board of Equalization would gradually equalize Southern Pacific's assessments in return for the voluntary dismissal of its suits, which occurred in 1959, and the fact is that the Board did in that year embark upon, and has since followed, a policy of gradually reducing the assessment ratios of all railroads and other state-assessed taxpayers. This is indicated by the fact that the assessment ratio applied by the Board to the full cash value of Southern Pacific's operating properties has been dropped from 50% in 1958 to 37.5% in 1967. In the light of this improvement they do not challenge the correctness of Mr. Flournoy's statement that much progress has been made in the direction of equalizing state and local assessments.

However, they also point out that despite this improvement there still remains very substantial assessment discrimination against the railroads in California, and the judicial remedies in the state courts to attack this problem remain cumbersome, so that both from the substantive and the procedural standpoints the need for federal relief legislation such as is embodied in S. 927 still clearly exists in California. They observe that it is apparent that assessments of railroad property made by the State Board of Equalization are still far from being equalized with local assessments of other properties from the fact that the Board has recently made its official finding, as required by law, that the 1967 state-wide average local assessment ratio was only 23.2% of full cash value, while, as above indicated, Southern Pacific estimates that the Board assessed its railroad operating properties at 37.5% of full cash value this year. In other words, railroad property is assessed at a ratio of 61% higher than that applied to locally-assessed property. Furthermore, they state that although, as Mr. Flournoy points out, a 1966 statute requires locally-assessed property to be assessed at a uniform state-wide ratio of 25% of full cash value by the 1971-72 fiscal year, the legislature apparently did not intend this statute to apply to railroad property assessments, since the same law provides that "nothing herein shall be applicable to the unit valuation of state-assessed properties".

Finally, they observe that the serious deficiencies in the state court procedures provided to attack such discrimination exist because of the absence of any provision for a single injunction action to be brought against the State Board of Equalization to contest its unitary assessment procedures, so that normally individual suits for refund must be brought by the railroad taxpayer in each county where it has paid taxes. This was the cumbersome procedure followed by Southern Pacific in its suits involving the 1958 tax year. This multiplicity of actions would be avoided under S. 927, since it would provide for a single injunction action against the unitary assessment in the federal courts.

The fact of discrimination in California should be very clearly implied from the testimony of Mr. Broley E. Travis, formerly Chief of the Valuation Division of the California State Board of Equalization for twelve years, prior to his retirement in 1962. As you will recall, Mr. Travis testified in support of the bill on August 7, 1967. In addition, Mr. Ronald B. Welch, with the California State Board of Equalization, had the following to say during the Fifty-Seventh Annual Conference of the National Tax Association in Pittsburgh in 1964 (Proceedings, p. 487) :

"I don't deny that railroads have been excessively taxed on their properties. * * * I have recalculated the California excess. In doing so, I have made a few changes in the data reported in the December 9, 1963, issue of *Railway Age*. I can't reconcile the 1961 railroad ad valorem taxes for California shown in *Railway Age* with the figures reported to us by the railroads. * * * I came out with a California excess of \$11,000,000" (instead of \$14,000,000).

With regard to the possible effect on the small taxing districts of the shift in the burden of taxation that could result from the equalization of all carrier

property at 25%, I am enclosing a statement for California prepared in a fashion similar to those furnished your Committee for Alabama and Ohio. From the California statement, you will note that of the 52 counties listed, only 5 show there will be a shift of over 1%, and of these, only 2 are over 2%. The average for the state is 0.364%.

We do not wish to belabor the point, merely to cooperate to the point necessary to aid in keeping the record straight.

With kind regards and all good wishes,

Sincerely yours,

JAMES N. OGDEN,
Vice President and General Counsel.

EFFECT OF EQUALIZATION OF CARRIER PROPERTY ON TOTAL COUNTY REVENUES IN THE STATE OF CALIFORNIA,
1965 66

County	Total county revenue from all sources, fiscal year 1965-66 ¹	Carrier property taxes, real and personal, fiscal year 1965-66 ²	Percent carrier taxes to total revenue	Reduction in 1965-66 carrier property taxes if carriers equalized at 25 percent	Percent of carrier tax reduction to total revenue
Alameda.....	\$119,150,381	\$2,374,121	\$1.993	\$791,366	0.664
Amador.....	2,662,407	3,055	.115	1,018	.038
Butte.....	19,966,482	267,731	1.341	89,243	.447
Calaveras.....	3,244,228	6,795	.210	2,265	.070
Colusa.....	3,801,786	42,457	1.117	14,153	.372
Contra Costa.....	68,445,025	823,256	1.203	274,419	.401
El Dorado.....	9,228,293	14,305	.155	4,768	.052
Fresno.....	71,466,101	973,248	1.362	324,413	.454
Glenn.....	4,181,720	53,586	1.281	17,860	.427
Humboldt.....	21,777,809	89,342	.410	29,778	.137
Imperial.....	11,762,676	321,266	2.731	107,088	.910
Inyo.....	3,541,250	18,478	.522	6,159	.174
Kern.....	61,004,031	978,029	1.603	326,008	.534
Kings.....	10,715,357	89,456	.835	29,816	.278
Lassen.....	3,225,478	258,044	8.000	86,006	2.666
Los Angeles.....	893,123,778	7,256,642	.813	2,418,857	.271
Madera.....	9,348,172	89,767	.960	29,920	.320
Marin.....	20,407,786	155,866	.764	51,950	.255
Mendocino.....	9,775,414	52,680	.538	17,559	.180
Merced.....	17,935,291	257,931	1.438	85,969	.479
Modoc.....	2,457,007	182,303	7.420	60,763	2.473
Monterey.....	24,039,228	310,753	1.293	103,583	.431
Napa.....	9,800,877	51,608	.527	17,202	.176
Nevada.....	4,510,681	94,168	2.088	31,388	.696
Orange.....	87,271,794	604,707	.693	201,567	.231
Placer.....	10,949,086	469,543	4.288	156,513	1.430
Plumas.....	3,517,099	129,849	3.692	43,283	1.231
Riverside.....	57,036,407	561,895	.985	187,297	.328
Sacramento.....	91,216,251	1,284,932	1.407	428,310	.470
San Benito.....	2,673,863	16,887	.632	5,629	.211
San Bernardino.....	80,017,871	1,913,252	2.391	637,745	.797
San Diego.....	118,506,224	694,493	.586	231,497	.195
San Francisco.....	159,679,797	1,571,392	.984	523,793	.328
San Joaquin.....	45,417,370	711,619	1.567	237,204	.522
San Luis Obispo.....	17,149,873	175,577	1.024	58,526	.341
San Mateo.....	48,568,003	665,241	1.370	221,745	.457
Santa Barbara.....	26,550,246	360,588	1.358	120,195	.453
Santa Clara.....	100,922,439	1,012,496	1.003	337,496	.334
Santa Cruz.....	18,375,876	82,980	.452	27,660	.151
Shasta.....	12,479,220	162,749	1.304	54,250	.435
Sierra.....	760,873	5,882	.773	1,961	.258
Siskiyou.....	7,118,245	306,278	4.303	102,092	1.434
Solano.....	14,556,672	172,522	1.185	57,507	.395
Sonoma.....	28,729,800	110,642	.385	36,881	.128
Stanislaus.....	28,685,768	307,908	1.073	102,635	.358
Sutter.....	6,706,775	74,233	1.107	24,745	.369
Tehama.....	5,275,249	111,786	2.119	37,262	.706
Trinity.....	2,499,830	4,202	.168	1,401	.056
Tulare.....	35,241,617	302,122	.857	100,707	.286
Ventura.....	33,906,258	224,008	.661	74,670	.220
Yolo.....	11,743,786	174,241	1.484	58,080	.495
Yuba.....	5,710,375	100,851	1.766	33,617	.589
Total.....	2,482,606,695	27,077,762	1.091	9,025,819	.364

¹ Includes all general county revenues from all sources as compiled by California State controller, for counties in which carrier property is situated.

² Source: Actual compilation by all major carriers in California. A few small carriers were omitted because of lack of detailed information.

