OFFICIAL OPINION NO. 18

March 8, 1954

Mr. John W. Hicks
Resident Director
Commission on State Tax and Financing Policy
Indianapolis, Indiana

Dear Mr. Hicks:

Your letter requesting an Official Opinion from this office reads in part as follows:

> "In accord with the direction of the Indiana General Assembly as set out in Chapter 241 of the Acts of 1953 this Commission is making a study of the taxing and financial policy of the state. The Commission will then make formal recommendations to the next Legislature.
>
> "One of the taxes to which we are giving particular attention is the Property Tax. Among possible revisions in our practices that are receiving the attention of the Commission are: (1) the assessment of various types of personal property at differing percentages of true value—these per cents to be set out in the statute as is done for example in the State of Ohio; (2) the elimination of household furnishings and equipment from the ad valorem tax rolls."

The specific questions posed by your letter, of which answer by Official Opinion is requested, are as follows:

> "1. Would a system of classification of tangible personal property for assessment for the purpose of taxation under the *ad valorem* tax laws comply with the 'uniform and equal' provisions of the Constitution?
>
> "2. Would it be possible to exempt household furnishings and equipment from the personal property tax rolls specifically by statute?"

At the outset, it should be emphasized that your questions relate to *property* taxes as distinguished from excise taxes. As a background to this question, it should be stated that classification for rate purposes in *excise* tax laws are generally upheld when not in conflict with the equal protection of the

law clause of the 14th Amendment of the Federal Constitution and Art. 1, Sec. 23 of the Indiana Constitution, granting equal privileges and immunities. These two constitutional provisions do not require any different standard, the only difference being that one is a provision of the Federal—the other of the Indiana State Constitution. With respect to *excise* taxes, these constitutional provisions are not violated if there is a natural and logical basis for classification and if the statute providing classification for rate purposes treats each person in the same class in a like fashion. Examples of cases upholding rate classification under excise tax statutes are as follows:

> Tax Commissioners v. Jackson (upholding the constitutionality of Indiana's Store License Tax) (1931), 283 U. S. 527, 51 S. Ct. 540, 75 L. Ed. 1248, 73 A. L. R. 1464;
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> Crittenberger v. State Savings & Trust Co. (upholding the constitutionality of a former Inheritance Tax Law of Indiana) (1920), 189 Ind. 411, 127 N. E. 552;
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> Miles v. Department of Treasury (upholding the constitutionality of Indiana's Gross Income Tax Law) (1935), 209 Ind. 172, 199 N. E. 372, 101 A. L. R. 1359, appeal dismissed in 298 U. S. 640, 56 S. Ct. 750, 80 L. Ed. 1372.

With respect to the constitutionality of *property* taxation, it is most important to note that a different constitutional provision applies, namely, the Indiana Constitution, Art. 10, Sec. 1, which provides as follows:

> "The General Assembly shall provide, by law, for a uniform and *equal rate* of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of *all* property, *both real and personal,* excepting such *only* for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law." (Our emphasis)

That the above constitutional provision is applicable to property taxes is held in the case of Miles v. Department of

Treasury (1935), 209 Ind. 172, 177, 199 N. E. 372, wherein it is stated as follows:

> "It is well settled that Article 10, Section 1, which provides for uniform and equal rate of assessment and taxation, and forbids exempting property except for specific purposes, applies only to property taxes under a general levy. Thomasson v. State (1860), 15 Ind. 449; Bright v. McCullough (1866), 27 Ind. 223; Kersey v. City of Terre Haute (1903), 161 Ind. 471, 68 N. E. 1027; Gafill v. Bracken (1924), 195 Ind. 551, 146 N. E. 109; State Board of Tax Commrs. of Ind. v. Jackson, *supra.*"

First. The "uniform and equal rate" provision of Art. 10, Sec. 1, has been explained in the case of Bright v. McCullough (1866), 27 Ind. 223 at page 230 to mean the following:

> "The section does not require that the rate of assessment shall be uniform and equal for all purposes throughout the State; and we think its meaning clearly is, that *the rate of assessment and taxation must be uniform and equal throughout the locality in which the tax is levied. If the levy is for state purposes, then the rate must be uniform and equal in all parts of the State;* and if the levy be for county purposes, the rate must be uniform and equal throughout the county in which the levy is made; and so in townships, when the levy is for township or road purposes. It was simply intended that the uniformity and equality of rate should be co-extensive with the territory to which the tax applies. Taxes are public burdens, which should be borne by all, and it was evidently the object of the convention, in the adoption of this and other provisions of the constitution, to devise a system for the assessment and levy of taxes that would distribute these burdens, among those liable to them, upon principles of uniformity, equality and justice. To this end the primary principle adopted is that taxes shall be assessed on the property liable thereto, according to its just value, and *by a uniform and equal rate.*" (Our emphasis)

To like effect is the case of Cleveland, Cincinnati, Chicago

and St. Louis Railway Company v. Backus, Treasurer (1892), 133 Ind. 513, 535 and 536, 33 N. E. 421, wherein this constitutional provision is explained as follows:

> "The first clause of this section is certainly complied with when the same basis of assessment is fixed for all property, and the same rate of taxation is fixed within the district subject to taxation; that is to say, there is uniformity and equality of assessment and taxation when all the property is to be assessed at its true cash value, and the *same rate* is fixed on all property subject to assessment for the tax. *If it be a tax for State purposes, the rate must be the same throughout the State;* if for county purposes, or township purposes, the same rule would apply." (Our emphasis)

Likewise in the case of Miles v. Department of Treasury (1935), 209 Ind. 172, 188, 199 N. E. (2d) 372, the court stated:

> "* * * It is clear that, under the Constitution of Indiana, equality of taxation is not required *except in a case of taxes affecting property by general levy* * * *."

Since your questions relate to personal property, you will note that the constitutional provision is applicable to "all property, both real and personal," so that the uniform and equal rate provision is applicable whether the property be real or personal.

Reference is made in your request to the situation in the State of Ohio wherein you refer to "the assessment of various types of personal property at different percentages of true value—these per cents to be set out in the statute as is done for example in the State of Ohio." However, the Constitution of the State of Ohio does not now contain a uniform and equal rate provision applicable to both real and personal property. Ohio's Constitution was amended on November 5, 1929, effective January 1, 1931, to justify the legislative action in that state. The amendment to the Ohio Constitution was recognized and explained in the case of State *ex rel.* Struble v. Davis (1937), 132 Ohio St. 555, 9 N. E. (2d) 684, 686, as follows:

> "* * * Thus, while the uniform rule was retained as to real estate, full and complete plenary power to other-

wise classify property for taxation and determine exemptions therefrom apparently was restored substantially as it had existed under the provisions of the Constitution of 1802. It is quite obvious, therefore, that, having expressly removed the previous limitation in the constitutional provision, the power of the General Assembly to determine the subjects and methods of taxation and exemptions of personal property therefrom is limited only by the provisions of Article 1 of the Constitution, which is the 'equal protection of the law' provision and is substantially the same as the guarantee in that respect contained in the Fourteenth Amendment to the federal Constitution.

"The provision making the general power to grant exemptions subject to the provisions of Article 1 of the state Constitution therefore constitutes no restriction not already imposed by the federal Constitution. The principle involved is set forth in 1 Cooley on Taxation (4th Ed.) 578, Section 272, as follows: 'In the absence of constitutional provisions to the contrary, the state may single out certain classes of objects for taxation, leaving other classes exempt or taxed at a different rate or in a different manner. For instance, in New York, where there is no constitutional requirement as to uniformity, classification of property so as to tax part but not all of the taxable property in the district is not prohibited. If there is no provision in the state Constitution requiring property to be taxed, then the only provision applicable is the equal protection of the laws clause in the federal Constitution which does not require taxation of all property but merely compels taxation of all property of the same class—precludes taxing part of the same class of property and exempting other property of the same class.' "

It is evident from the above case, that the Ohio Constitution retained the uniform rule only with respect to real estate and granted the Legislature the right to classify for rate purposes with respect to personalty.

There is a long history of decisions in Indiana on the constitutionality of excise tax laws, in a great many of which our

courts have emphasized the distinction between property taxes and excise taxes to uphold rate classification with respect to the latter. While upholding classification for rate purposes in excise tax statutes, when not in violation of the Fourteenth Amendment of the Federal Constitution, or of Art. 1, Sec. 23 of the Indiana Constitution, our courts in these decisions have indirectly, but repeatedly and consistently, recognized that rate classification is impossible in property taxation under our present Constitution.

Second. With respect to your second question, concerning the right of the Legislature to exempt household furnishings and equipment from personal property tax rolls, you will note that the provisions of Art. 10, Sec. 1 of our Constitution likewise provide what classes of property may be exempted by law. The Constitution limits that property which may be exempted to include "such only for municipal, educational, literary, scientific, religious or charitable purposes * * *." As stated in Oakhill Cemetery v. Wells (1906), 38 Ind. App. 479, 481, 78 N. E. 350:

> "The legislature is directed by Section 1, Article 10, of the Constitution to provide by law for a uniform and equal rate of assessment and taxation, and to prescribe such regulations as shall secure a just valuation for taxation of all real and personal property, excepting such only 'for municipal, educational, literary, scientific, religious, or charitable purposes, as may be especially exempted by law.' *The legislature is without authority to exempt any property from taxation unless it comes within one of the classes above mentioned.* State, *ex rel.* v. City of Indianapolis (1879), 69 Ind. 375, 35 Am. Rep. 223, and cases cited; Warner v. Curran (1881), 75 Ind. 309; Deniston v. Terry (1895), 141 Ind. 677; Harn v. Woodard (1898), 151 Ind. 132; Travelers Ins. Co. v. Kent (1898), 151 Ind. 349." (Our emphasis)

It should be noted that the Constitution provides for exemptions of property based upon the character of the property, its use or purposes. Each of such classes which may be specially exempted by law are such in which there is a benefit to the public generally from the use of such property. For instance,

the exemption of property used for charitable purposes has been upheld upon the theory that charities provide service to mankind which otherwise the state would have to provide. In other words, the exemption of property used for charitable purposes, in effect, amounts to an appropriation for charitable purposes. This has been recognized in the case of State *ex rel.* Tieman v. City of Indianapolis (1879), 69 Ind. 375, 377, wherein it is stated:

> "* * * It is the character of the property, its use or purpose, and not the character or class of its owner, that may exempt it from taxation. Among the examples which may be given of property used for 'charitable purposes,' under the constitution, may be mentioned the Asylum for the Blind, the Institution for the Deaf and Dumb, the Hospital for the Insane, asylums for the poor, and various minor institutions, which enure to the benefit of the public, to all, not to particular individuals or to classes of individuals. To tax the property belonging to these great leading institutions would, for instance, be the same as if the State taxed herself—figuratively speaking, paying out her revenue with one hand and taking it in with the other. The property, therefore, used for such purposes, may be, by law, exempted from taxation."

It is difficult to conceive in what manner all household furnishings and equipment could be said to be used, "for municipal, educational, literary, scientific, religious or charitable purposes."

In conclusion, a careful scrutiny of our State Constitution, Art. 10, Sec. 1, shows that it was carefully framed and precisely worded to prohibit rate classification with respect to property taxation and to authorize exemptions only as to property used for the purposes stated therein.

Therefore, it is my opinion that:

1. A system of classification of tangible personal property for assessment for the purpose of taxation under the *ad valorem* tax laws as proposed in your request would not comply with the "uniform and equal" provisions of the Constitution.

2. It would not be possible to exempt household furnishings and equipment from the personal property tax rolls specifically by statute, without constitutional amendment.

OFFICIAL OPINION NO. 19

March 12, 1954

Mr. Doxie Moore, Director
Indiana Department of Conservation
311 West Washington Street
Indianapolis, Indiana

Dear Mr. Moore:

This is in reply to your letter requesting an Official Opinion, which reads as follows:

> "The Federal Government has a tax on fishing and hunting equipment. This money is returned to the States on the basis of (1) area, and (2) the number of hunting and fishing licenses sold. (50 Stat. 917.)
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> "Under the Indiana law many war veterans are issued a free hunting and fishing permit. (Burns—11-1424.)
>
> "These are not counted as licenses sold by the Federal Government.
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> "It has been suggested that the Indiana Department of Conservation give to each veteran applying for a free permit, such a permit and the sum of two dollars ($2.00). The two dollars ($2.00) to be given on the condition that such veteran buy a hunting and fishing license with the money.
>
> "The plan proposed would take two dollars ($2.00) from Department Funds then put it back for the license sold. The actual cash in the Department would be the same, but it would allow the Department to show a license sold so as to increase the return from the Federal Funds.
>
> "My questions are: