

OPINION 39

OFFICIAL OPINION NO. 39

December 21, 1971

Hon. Ralph R. Heine
Indiana State Representative
R. R. No. 2
Columbia City, Indiana 46725

Dear Representative Heine:

This is in response to your request for my Official Opinion concerning the following:

“Do the provisions of the Acts of 1961, Ch. 319, Sec. 701, as found in IC 1971, 6-1-26-1, Burns’ (1971 Supp.) Section 64-711, which provide for a rotating six-year cycle of property reassessment in Indiana, conflict with the constitutional provisions in Art. 10, Sec. 1 (a) of the Indiana Constitution providing for a uniform and equal rate of property assessment and taxation?”

ANALYSIS

Under the provisions of the Act in question, the counties in Indiana are divided into six (6) groups selected alphabetically to be assessed one-sixth at a time. Thus, the first group of fifteen (15) counties, Adams through Dearborn, would be reassessed for the year 1974 and each sixth year thereafter, etc.

The history of reassessment in Indiana has shown property values and assessed valuation to be markedly dissimilar. Prior to 1949, real property was assessed not “oftener than every four (4) years or in any year in which there [was] a general election for the election of any state, county or township officials, except upon the order of the State Board of Tax Commissioners and as hereinafter provided.” The 1949 Reassessment Act authorized the statewide reassessment of all real property, effective March 1, 1950, and this was the last statewide reassessment before 1961.

The 1961 Property Assessment Act was an attempt to correct these disparities. The rate of assessment for all property

was placed at 33-1/3 of its true cash value. Additionally, all real property was to be assessed statewide after 1962 and reassessed again every eight (8) years thereafter.

The 1969 Amendment (the Act in question) sets up sexennial reassessment on a statewide basis. It would appear the main purpose of sexennial reassessment is purely an administrative, mechanical convenience. Instead of the entire state being reassessed at one time within a year's duration and every eight (8) years thereafter, one-sixth of the state is to be reassessed once each six (6) years. This enables the State Board of Tax Commissioners to advise more adequately the local assessors during the reassessment period and allow the Board more time and personnel in reviewing the assessment so completed and hearing individual taxpayer appeals. In essence, the Board would not be required in a limited space of time to equalize all the state at once, but could do a section at a time.

The problem arises as to whether this arrangement is in violation of Art. 10, Sec. 1 of the Indiana Constitution which requires a uniform and equal rate of assessment and taxation. It is my opinion that it is not.

The last statewide reassessment was conducted in the year 1969 and would be the last statewide assessment prior to the beginning of the 1975 sexennial reassessment. Property values are theoretically based on the Rules and Regulations of the State Board of Tax Commissioners as said rules existed on said date. The rules are based upon factors affecting value as of the time adopted.

When the first group of counties is reassessed in 1975, this group will be at the 1975 value levels whereas the rest of the state will be at the 1969 level. While it is correct that property values over-all do not fluctuate widely, they can vary from area to area depending on growth. Fluctuation could be great over a period of time from 1969 to 1975.

The possibility, therefore, exists that the first group will be assessed at the rate evaluation which is higher or lower than other similar properties in the state. As subsequent groups of counties are reassessed, the disparity will decrease.

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The question, therefore, is whether *any* disparity may exist, even though temporary, or must all property be assessed and equalized at the same time in order to be in compliance with Art. 10, Sec. 1, of the Indiana Constitution. The answer is quite clear that disparity may exist as long as there is no intentional discrimination.

This question is adequately discussed at 76 A. L. R. (2d) 1077 through 1081. The essence of the discussion is that even though the result of temporary non-completion of the program might cause some lands to be assessed at new and higher valuations, while other lands not yet reached might be assessed at old and lower contrasting values, this is not violative of the Constitution where the delay is only temporary, providing there is no actual intent to discriminate. *Sunday Lake Iron Co. v. Wakefield Twp.* (1918), 247 U.S. 350; *May Dept. Stores Co. v. State Tax Comm.* (1958), 308 S. W. (2d) 748; *Rozan v. County Comrs. of Calvert County* (1950), 71 A (2d) 47; *Citizens' Committee for Fair Property v. Warner* (1953), 154 P (2d) 1005.

The purpose of the Indiana statute is clear on its face. It is to ease administrative and mechanical problems which are caused by statewide assessment during a one-year period. The new Act creates no systematic discrimination inasmuch as the groups are not selected according to location, but purely by alphabetical sequence. The State Board of Tax Commissioners may, if necessary, alter the sequence where conditions require, such as in the instances of overlapping school districts.

The State Board of Tax Commissioners still has the power and authority to review and equalize assessments as it had before, but with the additional advantage of being able to do a more thorough job. Additionally, pursuant to Burns' 64-714, *supra*, the State Board of Tax Commissioners can, at any time that it shall deem necessary in order to maintain an equitable and just assessed valuation, order the real property either in whole or in part reassessed in any township or townships, county or counties, or the State as a whole.

Additionally, the taxpayer also has three administrative remedies available to him to insure eventual uniformity. (1)

The taxpayer can appeal his individual assessment in the year of the general assessment to the local county board of review, and then to the State Board of Tax Commissioners, and finally to the circuit or superior court of the county where the property is situated. (Burns' 64-1002, 1003, 1004.)

(2) A petition for reassessment can be filed with the State Board of Tax Commissioners by a certain percentage of resident owners in a certain township or city before March 31 in any year other than a year of general election or a year of periodic reassessment. (Burns' 64-713, *supra.*) (3) A property owner can file a petition with the State Board of Tax Commissioners requesting that his property be reassessed.

There are ample administrative remedies available to the State Board of Tax Commissioners and individual property owners to insure that one group of counties is not systematically or intentionally discriminated against in effect, thus making the sexennial reassessment constitutional, both on its face and in its effect.

CONCLUSION

It is, therefore, my official opinion that the provisions for sexennial reassessment of real property are compatible with Art. 10, Sec. 1 of the Indiana Constitution which provides for a uniform and equal rate of property assessment and taxation inasmuch as there is no intentional discrimination. The legislative intent is clearly an attempt to remove administrative and mechanical difficulties brought about by previous statewide reassessment during a one-year period.