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Floyd Harmer, Stanley D. Roberts, G. Marion Hinckley, As The Board Of County Commissioners For Utah County, And As The County Board Of Equalization, And As Individual Taxpayers In Ut.A.H County; Harrison Conover, As Utah County Assessor; Elwood L. Sundberg, As Utah County Auditor; Maurice C. Bird, As Utah County Treasurer; C. Steven Hiatch, As A Resident Of And Taxpayer In Utah County v. State Tax Commission : Reply Brief of Respondent State Tax Commission

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IN THE SUPREME COURT OF THE STATE OF UTAH

LOYD HARMER, STANLEY D. ROBERTS, G. MARION HINCKLEY, as the Board of County Commissioners for Utah County, and as the County Board of Equalization, and as individual taxpayers in Utah County; HARRISON CONOVER, as Utah County Assessor; ELWOOD L. SUNDBERG, as Utah County Auditor; MAURICE C. BIRD as Utah County Treasurer; STEVEN HATCH, as a resident taxpayer of Utah County,

Plaintiffs, Appellants and Cross-Respondents,

vs. —

UTAH STATE TAX COMMISSION

Defendant, Respondent and Cross-Appellant.

REPLY BRIEF OF REPLY STATE TAX COMMISSION

Appeal From the Fourth District
HONORABLE ALLEN R. SOMMER

VERNON B. ROMNEY
Attorney General

M. REED HUNTER

Special Assistant Attorney General
State Capitol Building
Attorneys for Defendant
and Respondent

DAYLE JEFFS
County Attorney

ROBERT BULLOCK
Special County Attorney

LOYD L. PARK

Deputy County Attorney

43 East 200 North, Provo, Utah

Attorneys for Plaintiffs and Appellants

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Cl. 1

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*Plaintiffs, Appellants and
Cross-Respondents,*

-- vs. --

UTAH STATE TAX COMMISSION,

*Defendant, Respondent and
Cross-Appellant.*

Case
No. 11369

REPLY BRIEF OF RESPONDENT STATE TAX COMMISSION

STATEMENT OF FACTS

Appellants' factual recitation is excerpted from the formal judgment of the lower court, and is thus *ipso facto* immune from any criticism on the grounds that it distorts such judgment. As we noted in the initial brief, however, it is the belief of respondent State Tax

Commission that the formal judgment of the court is itself distortive, particularly in its omission of numerous relevant facts related to average assessment levels, the default of county assessors, etc.

It is distortive in another way as well; the lower court's opinion, as set forth in a memorandum decision (R. 145-153) prepared by the court, was partially in favor of plaintiffs and partially in favor of defendant (appellants' brief, page 2; respondent's initial brief, page 2). But the formal judgment *prepared by counsel for appellants* does not reflect in a just and balanced manner this memorandum decision, but rather emphasizes and affectionately expands those parts of the memorandum decision most favorable to appellants and denigrates, emasculates, and sometimes blithely ignores those parts of the same memorandum decision favorable to respondent.

It is the sincere belief of respondent that the memorandum decision itself, and the extensive factual narrative set forth in the perior brief of respondent, more fully set forth the salient facts in this controversy, and set them forth with a fairer emphasis, than the findings of fact quoted in appellants' brief.

ARGUMENT

POINT I

THE STATE TAX COMMISSION OF UTAH IS A CONSTITUTIONAL BODY, CHARGED GENERALLY WITH THE ADMINISTRATION AND ENFORCEMENT OF TAXATION LAWS IN THIS STATE, AND SPECIFI-

CALLY GIVEN THE RESPONSIBILITY OF
SUPERVISING LOCAL TAX OFFICIALS
AND EQUALIZING ASSESSMENTS BOTH
AMONG AND WITHIN THE SEVERAL
COUNTIES TO INSURE EQUALITY AND
UNIFORMITY THROUGHOUT THE STATE.

The lower court correctly ruled that the State Tax Commission (hereafter referred to as the "Commission") has broad supervisory powers over county tax officials, including the power to equalize assessments within the various counties. Indeed, the constitutional and statutory provisions setting forth the powers of the Commission and defining its relationship with these local officials are unequivocal to the degree that a contrary ruling would have been inconceivable.

The controlling constitutional provision is set forth in the brief of appellants (pp. 9-10) and here restated for the convenience of the court:

There shall be State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party. The members of the Commission shall be appointed by the Governor, by and with the consent of the Senate, for such terms of office as may be provided by law. *The State Tax Commission shall administer and supervise the tax laws of the State.* It shall assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties. It shall have such other powers of original assessment as the Legislature may provide. *Under such limitations as the Legislature may prescribe, it shall establish systems of public accounting, review proposed bond issues, revise the tax levies and budgets of local govern-*

mental units, and equalize the assessment and valuation of property within the counties. The duties imposed upon the State Board of Equalization by the Constitution and Laws of this State shall be performed by the State Tax Commission.

In each county of this State there shall be a County Board of Equalization consisting of the Board of County Commissioners of said county. *The County Boards of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within their respective counties, subject to such regulation and control by the State Tax Commission as may be prescribed by law.* The State Tax Commission and the County Boards of Equalization shall each have such other powers as may be prescribed by the Legislature. (Emphasis supplied.) Utah Const., art. XIII, § 11.

Thus, the Constitution specifically and without equivocation grants the State Tax Commission general powers to equalize within the various counties, as well as among these counties, and this right is to be exercised freely, and to be limited only by legislative restriction. The implementing legislation¹ does not limit this power but simply further defines it and sets forth procedures (usually in terms of broad outlines) through which it is to be exercised:

Section 59-5-46. The powers and duties of the state tax commission are as follows:

. . .

(3) To prescribe such rules and regulations as

¹We feel that the convenience of the court might best be served by a complete listing of pertinent statutory provisions, and beg the court's indulgence in this uninterrupted and somewhat lengthy recitation of statutory law.

it may deem necessary, not in conflict with the Constitution and laws of the state, to *govern county boards and officers in the performance of any duty in connection with assessment, equalization and collection of general taxes.*

. . . .
(9) *To have and exercise general supervision over the administration of the tax laws of the state, over assessors and over county boards in the performance of their duties as county boards of equalization and over other county officers in the performance of their duties in connection with assessment of property and collection of taxes, to the end that all assessments of property be made just and equal, at true value, and that the tax burden may be distributed without favor or discrimination.*

. . . .
(11) *To confer with, advise and direct county treasurers and assessors in matters relating to the assessment and equalization of property for taxation and the collection of taxes . . .*

. . . .
(14) *To direct proceedings, actions and prosecutions to enforce the laws relating to the penalties, liabilities and punishments of public officers, persons and officers or agents of corporations for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property;*

. . . .
(18) *To visit, as a board or by individual members thereof, annually, and oftener if deemed necessary, each county of the state for the investigation and direction of the work and methods of local assessors and other officials in the assessment, equalization and taxation of property, and to ascertain whether the provisions of law requiring*

the assessment of all property, not exempt from taxation, and the collection of taxes have been properly administered and enforced.

(19) To examine carefully into all cases where evasion or violation of the laws for assessment and taxation of property is alleged, complained of or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered.

. . .

(23) To . . . exercise all powers necessary in the performance of its duties.

Section 59-5-47. The state tax commission shall *adjust and equalize the valuation of the taxable property* in the several counties of the state for the purpose of taxation; and to that end it may of its *own initiative order or make an assessment or reassessment of any property which it deems to have been overassessed or underassessed or which it finds has not been assessed.*

Finally, Section 59-7-13 provides:

Each year the state tax commission shall conduct an investigation throughout each county of the state to determine whether all property subject to taxation is on the assessment rolls, and whether such property is being assessed at thirty per cent of its reasonable fair cash value. When, after any such investigation, it is found that any property which is subject to taxation is not assessed, then the state tax commission *shall direct the county assessor, the county board of equalization or the county auditor as it may determine to enter the assessment of such escaped property.* If it is found that any property in any county is not being assessed at thirty percent of its reasonable fair cash

value, the state tax commission shall, for the purpose of equalizing the value of property in the state, increase or decrease the assessed valuation of such property in order to enforce the assessment of all property subject to taxation upon the basis of thirty per cent of its reasonable fair cash value, and *shall direct the county assessor, the county board of equalization or the county auditor, as it may determine, to correct the assessed valuation of such property in the manner which the state tax commission shall prescribe.* The county assessors, county boards of equalization and county auditors shall make such increases or decreases as may be required by the state tax commission to make the assessment of all property within the county conform as nearly as may be to thirty per cent of the reasonable fair cash value.

(All emphasis supplied.)

We would respectfully urge that all of the statutory provisions just quoted are reasonable, proper, within the constitutional mandate and, as will subsequently appear, also necessary and desirable.

Appellants rely on two antiquated cases in their contention that the Commission power to supervise county officials is limited to equalization among the various counties and does not extend to equalizing values within these counties. *Salt Lake City v. Armstrong*, 15 Utah 172, 49 Pac. 641 (1896); *State ex rel Cunningham v. Thomas*, 16 Utah 86, 50 Pac. 615 (1897). This reliance is ill advised, since these cases are no longer good law, being a construction not of the current constitutional language but of constitutional language which was

discarded by the people of this state in 1930. Article XIII, § 11, read as follows prior to 1930:

Until otherwise provided by law, there shall be a State Board of Equalization, consisting of the Governor, State Auditor, State Treasurer, Secretary of State and Attorney-General; also, in each county of this State, a county board of equalization, consisting of the board of county commissioners of said county. The duty of the State Board of Equalization shall be to adjust and equalize the valuation of the real and personal property *among* the several counties of the State. The duty of the county board of equalization shall be to adjust and equalize the valuation of the real and personal property *within* their respective counties. Each board shall also perform such other duties as may be prescribed by law. (Emphasis supplied.)

As is obvious from a perusal of this and the current constitutional language, it was through enactment of the current provision that the State Tax Commission as now structured came into existence. The date of its birth was January 1, 1931, and the enabling amendment was proposed pursuant to a study made by a tax revision commission consisting of S. R. Thurman, W. W. Armstrong, and R. E. Hammond. The Tax Revision Commission felt that the creation of a full-time tax commission would lead to the modernization of antiquated tax administrative structures and procedures, and would assure equity and uniformity in administration amongst all citizens of the state. *Report of the Tax Revision Commission of the State of Utah* (1929).

The amendment of the constitution amounted to a

constitutional reversal of the decisions relied upon by appellants, and a statement by the electorate of this state to the effect that the Commission was to have broader equalization powers than did the old State Board of Equalization. The cases are thus *not only rendered meaningless, based as they are on premises no longer valid, but specifically repudiated*. There is no case in Utah postdating 1930 which can reasonably be construed to deny or, in any meaningful sense limit, the power of the State Tax Commission to equalize assessments within the various counties as well as among them.

The one modern (i.e., post 1930) case cited by appellants is *University Heights, Inc. v. State Tax Comm'n.*, 12 Utah 2d 196, 364 P.2d 661 (1961). This case held that the State Tax Commission, in determining the corporate franchise tax of a corporation pursuant to the alternative method set forth in Repl. Vol. Utah Code Ann. § 59-13-3 (1963), need not use an appropriate multiple of the assessed valuation of the property of this corporation made for ad valorem tax purposes, but may make its own independent investigation and judgment as to the value of that property. The decision makes certain general references in dicta to the supervisory powers of the Tax Commission over county assessors and states that local assessment is primarily a function of a county assessor, and the legislature obviously intended that the Tax Commission would not usurp this function save in exceptional circumstances. It does not say that the county assessor performs his duties without being responsible to the State Tax Commission, but rather states precisely the contrary. The case makes no reference

whatsoever to county boards of equalization. To suggest, as counsel for plaintiff has done, that this case stands for the proposition that the Commission cannot correct errors made by a county board of equalization when it discovers them, or modifies the power granted to the Commission in the quoted constitutional and statutory provisions, is indeed a most tortured construction.

There is one post 1931 case which does have precedential value, however. In *County Board of Equalization of Kane County v. State Tax Comm'n of Utah*, 88 Utah 219, 50 P.2d 418 (1935), this honorable court held:

Since the commission has general supervision over the tax laws of the state and over those charged with the enforcement of those laws, and has the power on appeal to make such correction or change in the order of the county board of equalization as it may deem proper, it must necessarily follow that it is authorized to cancel, vacate, or change an assessment when, upon a proper showing, it has been determined that the assessment should be so cancelled, vacated, or changed. (Emphasis supplied.)

It must indeed necessarily follow.

An inquiry into case law from other jurisdictions is not rewarding because of variation in constitutional language. A few cases may have limited value by way of analogy. For example, *Bank of Carthage v. Thomas*, 330 Mo. 19, 48 S.W.2d 930 (1932), upheld an increase of 48.33% in personal property valuations made by the state board in overruling a county board, and based this

holding in large part on simple recognition of the state's superior authority.

In most jurisdictions, the State Tax Commission, or comparable agency under another name, is given broad supervisory and equalization powers not unlike those granted our own. For example, the authority of the Arizona Commission has been described in this manner:

The State Tax Commission in its capacity as State Board of Equalization is invested with the duty to equalize the valuations and assessment of property through the state. Its power of equalization is practically unlimited. To that end it may equalize the assessment of all property between persons of the same assessment district, between cities and towns in the same county, and between different counties of the state and the property assessed by the commission in the first instance. *Southern Pacific Co. v. Cochise County*, 92 Ariz. 395, 377 P.2d 770 (1963).

Counsel for plaintiffs urges that an adoption of the position of defendant would lead to an emasculation of county boards of equalization. We respectfully suggest that this is analagous to claiming that the establishment of an effective appellate system deprives trial courts of their authority and meaning. Respondent supports the concept of viable county boards, acting dynamically in full exercise of their powers. They are in no sense superfluous but have a significant role in tax administration. The fact that they are supervised by the tax commission does not take away their authority but rather insures proper exercise of it. The Commission, in turn, has

checks on its exercise of granted powers in the legislative and judiciary. If a county board feels that actions or orders of the Commission are unlawful or unfair, it can (as has happened in the instant case) petition for judicial review.

Typically (in this jurisdiction as well as elsewhere) decisions of county boards of equalization acting within the sphere of their authority are left undisturbed. It is only in unusual situations, such as in the present problem, where a county board refuses to implement a lawful directive given to it by the tax commission or, also as in this case, purportedly acts but acts invalidly due to failure to adhere to controlling substantive and procedural law, that the state supervisory taxing authority takes steps to reverse or correct action of county boards, beyond responding to routine appeals.

County boards of equalization exercising their appointed powers are necessary to proper tax administration in Utah. Equally necessary is a broad supervisory power in the Utah State Tax Commission, specifically including the power to review valuation and assessments of property within the various counties. We respectfully submit that the tax commission does have this power, and that it makes no difference whether this power is exercised in relation to a single piece of property or 700.

POINT II

ONLY THROUGH SUPERVISION OF LOCAL TAXING OFFICIALS BY THE STATE TAX COMMISSION, AND THE EXERCISE BY THE COMMISSION OF BROAD CORRECTIVE POWERS, CAN EFFICIENT AND EQUITABLE TAX ADMINISTRATION THROUGHOUT THE STATE BE ASSURED, AND THOSE SECTIONS OF UTAH CONSTITUTIONAL AND STATUTORY LAW WHICH PROVIDE THEREFORE ARE CONSISTENT WITH LOGIC, EQUITY AND THE PUBLIC INTEREST.

Appellants apparently envision the State Tax Commission functioning vis-a-vis county tax officials in a loosely correlative, speak-when-you-are-spoken-to kind of role, and regard anything further as unpalatable interference. In Point I, we have determined that this is not the role envisioned by the framers of the Constitution and the duly elected legislators of this state for the Commission, and in this point we will explore several policy reasons why the relationship established by these bodies to govern interaction of state and county tax officials is not only workable but, indeed, the only just and proper relationship which might exist.

There are a number of reasons why this is so. First, it is abundantly clear that county governments do not have, and because of severe manpower and monetary limitations cannot have, assessor's offices staffed by qualified experts. This problem exists throughout the country, and the testimony of Guy Ivins, Harrison Conover and David Burton bears eloquent witness to the existence in

spades of these problems in this jurisdiction. Only on the state level can persons with experience and expertise be compensated roughly consistent with their abilities, and others trained to arrive at the same degree of expertise and experience. If every county were required to "go it alone" without the assistance of these competent state employees, which assistance is invariably readily extended, the situation would be considerably worse than at present.

One reason this training and experience problem is so significant, here as elsewhere, is that assessors are elected, rather than appointed, and anyone at all can run for the office. Untrained and inexperienced personnel cannot help but make errors in their work and without a centralized state agency to advise and teach, *and correct errors when necessary*, total chaos would soon result.

Further, and more importantly, only through a centralized equalization agency exercising considerable powers can uniformity and equality of assessment throughout the state be assured. It is clear that an intrinsic safeguard operates with some effectiveness in cases of discriminatory valuation or assessment between taxpayers in the same county. If the property of X is valued or assessed at a higher percentage of its fair cash value than the property of his neighbor Y, X may seek relief through the designated administrative process or through institution of legal proceedings. If X is sufficiently informed and sufficiently enraged, he will seek such relief. This safeguard, however, is totally inoperative in

the case of a systematic undervaluation or underassessment within a county. If everyone's valuations or assessments are kept low or even lowered, no one complains and everyone votes for good old whoever is able to take the credit for the bonanza. In this type of situation, which is far from uncommon (see Point IV, respondent's initial brief), the need for a centralized state agency with power to assume original jurisdiction to right whatever wrongs exist becomes strikingly apparent. Where there is a wrong, the law contemplates the existence of a remedy.

These hypothetical considerations become very concrete when explored in the frame of reference of a statewide levy, such as the uniform school fund provided for in Utah Const. art. X § 3 and Title 53, Ch. 7, Utah Code Annotated. Max H. Kerr, director of the property tax division of the Utah State Tax Commission, testified (Tr. 155-181) as to the mechanics of how a state-wide levy is set and how tax monies flow into a centralized pool for subsequent distribution based on need determined according to specific statutory standards. He testified further that there were in fact three levies for educational purposes: a 16-mill levy for what was designated as the basic program, a 12-mill levy for the state-supported leeway program, both of which are set, and the uniform school fund levy which varies yearly. In 1967, it was 7.3 mills. A county must exact both the 16- and 12-mill levies to participate in the uniform school fund program, and in 1967 all counties did. The three combined total 35.3 mills, a considerable levy, and since a substantial percentage of ad valorem taxes go into this fund,

the reduction of assessments in one county has impact in all counties. Suppose, for example, that in County X the county board of equalization arbitrarily reduced all valuations for assessment purposes by fifty percent. In all likelihood, no resident of the county would sue or otherwise challenge such a beneficent action. The county would then make the required levies, taxes would go into the uniform school fund, the county would be entitled to draw therefrom, and (assuming other counties or most other counties attempted proper assessment) the schools in County X will receive financial benefits far in excess of contributions made by residents thereof, and far in excess of what they are justly entitled to.

Since the reduction of assessments in any county, therefore, affects taxpayers in other counties by requiring them to pay a disproportionate share of the school support monies, assessments can be wrongfully kept low with only a nominal loss in revenues availability. It follows inevitably that the uniform school fund can only be equitably and properly administered if assessment levels are roughly uniform throughout the state, and this uniformity can be assured only by a state agency with broad powers of review and adjustment of county equalization actions. Mr. Kerr, in association with the uniform school fund for well over a decade, and a recognized authority in the area, corroborated these conclusions with his expert opinion.

The same principles are applicable, of course, to all other statewide levies as well as the uniform school fund, which has been examined in some detail because it is a

prototype and because it is at the present time, in terms of dollars involved, easily the most significant state-wide levy.

Another compelling reason why state-wide equalization is required is that local tax officials are under considerable pressures to keep taxes low because of political stress. The framers and amenders of our constitution recognized clearly the strengths and weaknesses of local tax administrators, which are axiomatic. Their great virtue is that they are close to the people, aware of local economic and political changes, often familiar even with particular properties, and are, thus, in an especially appropriate position to make equalization adjustments in the interests of equity and fairness. The negative side of the coin is that this very closeness subjects them to varied emotional, social, and political pressures which sometimes distort perspective. A central state authority, more removed, is less subject to these. Local pressures consistently are in one direction, toward reduction of assessments and taxes. If history teaches us anything, it is that the human animal generally does not like to pay taxes and that a heavy tax burden, and particularly a sharp increase in tax burden, can lead directly to lost elections. These problems were explored in considerable detail in Point IV of the initial brief filed by respondent.

These truths are manifest in this jurisdiction as well as almost all others. State-assessed property is close to the statutory standard, locally-assessed property dramatically lower.

This system of intergovernmental administrative check and balance was conceived to solve (and works well in solving) concrete problems to insure compliance with the mandate of this honorable Court to the effect that it is "self-evident" that "no tax is legal" which is not "equally and impartially laid on the taxpayer" and "honest and responsible in its administration" and secures "these conditions to the taxpayer in particular and to the public in general." *Kerr v. Woolley*, 3 Utah 456, 24 Pac. 831 (1866).

The problems above described are not creations of the plaintiffs; rather, the difficulties are built in. In recognition of these and related problems, the framers and amenders of our constitution and our representatives in the legislature have wisely created a central administrative body and clothed it with broad quasi-legislative authority. It is significant that just about all disinterested property tax experts favor centralized, technically proficient state tax authority with considerable authority over local assessments and equalization.²

POINT III

THROUGHOUT THIS CONTROVERSY, THE STATE TAX COMMISSION ACTED IN ACCORDANCE WITH CONTROLLING LAW IN DISCHARGE OF ITS SUPERVISORY AND EQUALIZATION RESPONSIBILITIES, BUT THE PURPORTED ADJUSTMENTS MADE

²See, for example, Morrill, Denis R., *Property Tax Assessment and the Utah Constitution — A Taxpayer's Dilemma*, in *Utah Law Review* (Vol. 1966 — No. 2.)

BY THE COUNTY BOARD OF EQUALIZATION ARE IN PART INVALID BECAUSE OF PROCEDURAL ERROR.

Since supervisory powers of the State Tax Commission over county tax officials have been set forth, it is now appropriate to inquire as to whether or not these powers were properly exercised. The propriety of exercise in relation to the actual reassessment in Provo and Orem was examined in some detail in respondent's initial brief, and such examination will not be repeated. We respectfully submit that the Commission's actions during the entire course of this reassessment were proper and within its delegated powers.

We shall at this juncture examine the actions of the county and state authorities in the hearings which followed the appraisals and mailing of the notices of assessment. It is the position of respondent (set forth in Point V of the initial brief without commentary or argument) that the Commission's actions are sustainable, but that those of the County Board of Equalization must be struck down in part because of procedural error and also because of abandonment of constitutional and statutory valuation standards (discussed in Point IV *infra*).

Section 59-7-1, Utah Code Annotated, as amended (1963), dealing with the powers and procedures of County Boards of Equalization, provides in pertinent part:

The board of county commissioners is the county board of equalization and must meet on the 31st day of May in each year to examine the assessment books and equalize the assessment of prop-

erty in the county, including the assessment for general taxes of all cities and towns situated therein. It must continue in session for the purpose from time to time until the business of equalizing is disposed of, but not later than the 20th day of June, except as otherwise provided. All complaints regarding the assessment of property where notice of the decision of the county board of equalization thereon has not been given to the taxpayer on or prior to June 20, and all such complaints not disposed of or decided by said board on or prior to said date shall be deemed to have been denied on said date and no notice of such denial need be given.

Section 59-5-47, Utah Code Annotated, 1953, setting forth a procedure for State Tax Commission reassessments, provides:

The state tax commission shall adjust and equalize the valuation of the taxable property in the several counties of the state for the purpose of taxation; and to that end it may of its own initiative order or make an assessment or reassessment of any property which it deems to have been overassessed or underassessed or which it finds has not been assessed. In the event the commission shall intend to make an assessment or reassessment under this section, notice thereof and of the time and place fixed by it for the determination of such assessment shall be given by the commission, by letter deposited in the post office at least fifteen days before the date so fixed, to the owner of such property and to the auditor of the county in which such property is situated. Upon the date so fixed the state tax commission shall assess or reassess such property and shall notify the county auditor of the assessment made, and every such assessment shall have the same force and effect as

if made by the county assessor before the delivery of the assessment book to the county treasurer. The county auditor shall record said assessment upon the assessment books in the same manner as is provided in section 59-7-9 in the case of a correction made by the county board of equalization, and no county board of equalization or assessor shall have any power to change any assessment so fixed by the state tax commission. All hearings had upon assessments made or ordered by the state tax commission pursuant to this section shall be held in the county in which the property involved is situated. One or more members of the tax commission may conduct such hearing, and any assessment made after a hearing before any number of the members of the tax commission shall be as valid as if made after a hearing before the full commission.

It is to be initially noted that the language in both of the controlling statutory provisions appears to be mandatory, and nothing in their wording would suggest that one might be interpreted to be permissive and the other not. Nonetheless, this is exactly what happened in the lower court. Before this contradiction is further explored, it would not be inappropriate to separately look at the impact on this problem of the two statutes, each in its own context.

It is clear that the Utah County Board of Equalization was asked to deal with a quantity of requests for equalization far beyond what it had dealt with in previous years, and perhaps beyond as well what it could adequately deal within the time provided in Section 59-7-1 (although this not conceded). However, the solu-

tion to this problem is in the law itself. The statute limits the right of the board to function through the period between the 31st of May and the 20th of June each year "except as otherwise provided." This proviso refers to Section 59-5-46(10), Utah Code Annotated, as amended (1959), which grants the Utah State Tax Commission discretion to reconvene county boards of equalization whenever necessary. The evidence shows that the county board did not request the Utah State Tax Commission to exercise its power pursuant to this provision, and that permission to reconvene was, therefore, not extended (R. 189). The record offers no reason to suspect that such a request would not have been honored, or indeed that comparable request by any county board had ever been denied. Therefore, any suggestions that the Commission would have been arbitrary or capricious in the face of such a request must fail.

The clear weight of authority in America is to the effect that a county board of equalization may function only within the time limits prescribed by the controlling language, and that *these limits are jurisdictional*. See *New Jersey Zinc Co. v. Sussex County Board of Equalization*, 70 N.J.L. 186, 56 Atl. 138 (1903); *State ex rel Evans v. McGinnis*, 34 Ind. 452, Anno. 105 A.L.R. 624 (1936).

Not only does the ruling of the lower court fail to recognize that legislation in force explicitly provides a completely adequate remedy for the problem described, but it creates itself opportunity for considerable mischief. The only limitation (and this is inferential) set

forth in the opinion to the county commission's acting as a board of equalization after June 20 is a requirement that the board proceed with due diligence and reasonable dispatch (R. 146), with the board apparently the judge of whether or not its diligence is due and its dispatch reasonable. The problems inherent in this type of situation are manifest. Suppose, hypothetically, that a board of equalization in a given county, acting under poor advice or a mistake in law or even (and this is considerably less likely) bad faith would sit on an appeal or a group of appeals until so late in the season that it is practically impossible for the Commission to correct a patently erroneous or discriminatory determination made by said board. If it is in the county board's power to determine its own dispatch and diligence, and to make its own evaluation as to whether attendant circumstances justify an extension of hearing beyond the statutory June 20, this possibility is not remote.

The ruling of the lower court in legitimatizing this kind of self-granted extension, based upon a board's own determination of its inability to complete its assigned task within the statutory period, with no provision for review of that extension, seems to have no counterpart in American jurisprudence. It seems patently at variance with the principle of law limiting powers of counties and component agencies to those specifically spelled out in statutory law, and Utah laws spelling out the supervisory powers of the State Tax Commission. Further, it seems to totally invalidate the third sentence of Section 59-7-1, *supra*, which states that all complaints

not disposed of on or prior to June 20 are deemed denied. This type of repeal of legislative acts by judicial fiat should not be upheld.

Let us now examine briefly Section 59-5-47. The lower court has in effect held that this statute gives the state one day to hold a hearing, listen to the complaint, assemble all pertinent data, make whatever investigation it deems appropriate, make its determination, reduce that determination to writing, and serve the same upon the county auditor. It is conceivable that the state's machinery might be able to do this in a single day in many instances by considering one or even a very few properties, but as the record shows in this case there were approximately 700 properties to consider in a very few days with pressures at least comparable to those earlier on the county board; to have complied with the procedure set forth above would have perhaps taken months (which in itself would have been a denial of substantive justice).

It would, of course, have been an easy matter for the state simply to have reestablished original values without making any effort to investigate complaints, study material and data submitted, or attempt to be fair. The Commission chose not to take this easy way out, but rather made a bona fide effort toward equity and accuracy (Tr. 122-123), as evidenced by the fact that 39.4 per cent of the final assessments varied, however slightly, from the initial assessments.

Section 59-5-47 differs from Section 59-7-1 in two significant aspects: (1) because of the inherent powers of the sovereign state, it cannot be deemed jurisdictional; (2) it contains no built-in solution to time pressures which may arise, such as that relating to reconvening in the case of the county.

There has been no contention, nor would the record support one, to the effect that the taxpayers involved here were in any way prejudiced by the few days involved in the Commission's investigation and consideration of the materials presented in the September hearings. On the contrary, the evidence suggests that this delay could only have worked to promote a proper and equitable review. We, therefore, respectfully suggest that a strict, unyielding construction of Section 59-5-47, based upon technical considerations extrinsic to its *raison d'être* is not appropriate, and that the statute should be liberally construed to implement its manifest purpose, which is to insure uniformity and equality of valuation, assessment and taxation.

It seems totally arbitrary, and clearly opposed to the best interests of the state and its citizenry, to construe Section 59-7-1, *supra*, which contains in itself an adequate solution to any problems involving time limitations and pressures, liberally to allow the county board of equalization, which has no inherent authority, to in effect ignore many of its requirements, and at the same time to strictly construe Section 59-5-47, *supra*, when this statute contains no provisions for dealing with an extraordinary workload, against a sovereign state.

In addition to the line of reasoning set forth above, defendant respectfully submits that, since it sent to the county auditor each day a notice of its action (i.e., that it took under advisement the valuation questions before it), that it did comply with the substance of Section 59-5-47.

In regard to the question of a supervisory officer sitting as a hearing officer, we submit that since the record shows that the official was a man of unusual knowledge and background, a recognized expert in ad valorem taxation (Tr. 150-155), and since he acted merely as an extension of the Commission in listening to complaints and gathering information which he passed on to the Commission, and further since he participated in no way in the Commission's ultimate decision-making process, it cannot be responsibly maintained that those property holders who appeared before this supervisory officer were in any way prejudiced, or that they received either quantitatively or qualitatively any less consideration than other taxpayers. Again, the substance of the statute was complied with, and the lower court's ruling that these particular hearings are void, in the total context of the problem patently disregards the underlying purpose of the statutory language (59-5-47, *supra*) and, therefore, the decision should be reversed.

Even though the procedure adopted by the state in its effort to correct the improper rulings of the Utah County Board of Equalization followed generally the procedures set forth in Section 59-5-47, *supra*, it should be noted (and this was urged to the lower court) that

they can be sustained under Section 59-5-46, supra, the pertinent parts of which are set forth in Point I, and Section 59-7-13, supra.

Since § 59-5-46 details the Commission's duties and responsibilities to supervise, advise, bring legal actions, etc., to insure "that all assessments of property be made just and equal, at true value, and that the tax burden may be distributed without favor or discrimination" (subsection 9) and then authorizes the Commission to "exercise all powers necessary in the performance of its duties" (subsection 23). We respectfully submit that the Commission's action was proper even in the absence of Section 59-5-47. There are no procedural problems here, since the law is clear that "where a statute empowers a state board to equalize valuations for taxation but does not point out the mode, any reasonable and efficient mode may be adopted." 3 Cooley, *Law of Taxation* § 1196 (1924). See *South Spring Range & Cattle Co. v. Board of Equalization*, 18 N.M. 531, 139 Pac. 159 (1914).

In relation to the procedure prescribed in Section 59-7-13, we submit that the Commission made the requisite investigation and finding. Under the circumstances, an immediate raise to 20 per cent of fair cash value was as near to the 30 per cent standard as could justly be made. We respectfully submit that the Commission clearly met the requirements of this statute, which gives wide procedural latitude.

We thus respectfully urge that even if the court finds the procedure requirements of Section 59-5-47 to be

absolutely inflexible and further finds that the State Tax Commission in its actions failed to adhere to these requirements, that its corrective actions are sustainable under Section 59-5-47 and Section 59-7-13, or either of them, and should be, therefore, upheld.

POINT IV

THE LOWER COURT DID NOT ERR IN RULING THAT THE AGRICULTURAL CLASSIFICATION SYSTEM DEvised AND IMPLEMENTED BY THE UTAH COUNTY BOARD OF EQUALIZATION WAS UNCONSTITUTIONAL, AND VALUATIONS ARRIVED AT BY USE OF THIS SYSTEM VOID. THE COURT SHOULD HAVE FURTHER RULED THAT THE BOARD GENERALLY ABANDONED IN ITS DELIBERATIONS THE CONSTITUTIONAL STANDARDS OF UNIFORM AND EQUAL ASSESSMENT, AND ASSESSMENT BASED ON FAIR MARKET VALUE, AND THAT THESE STANDARDS ARE BINDING UPON COUNTY AND STATE TAX OFFICIALS IN THE DISCHARGE OF THEIR VARIOUS DUTIES.

The record shows that on July 10, 1968, the Utah County Board of Equalization adopted a resolution relating to valuation of agricultural properties in this manner:

“Commissioner Roberts moved that the legitimate Class I agricultural land in an agricultural zone be assessed at an appraised value of \$500.00 per acre with other lands in an agricultural zone prorated according to class and also that agricultural land not in a strictly agricultural zone but used for legitimate farming be valued at

\$650.00 per acre for Class I and with other lands prorated according to class, seconded by Commissioner Hinckley and passed unanimously." (R. 131-132).

The court held that this resolution was invalid, being violative of constitutional standards, since it does not purport to reflect *market* value, and that the adjusted valuations based upon this classification were void. We respectfully suggest that the court was clearly correct in this ruling, but that it would have been appropriate to also rule that in its other deliberations as well the Board failed to adhere to controlling constitutional mandates.

As pointed out in the initial brief of respondent, the Utah Constitution (art. XIII, § 2 and 3) requires a uniform and equal rate of assessment and taxation, and that all properties be assessed according to fair market or fair cash value. These two tests are complementary and interlocking, since it is axiomatic that equality and uniformity in assessment and taxation can only be obtained if a common standard is employed for all properties.

The relief desired in this particular by respondent is a clear declaration that county tax officials, as well as state officials, are bound absolutely by the constitutional and statutory requirements of uniformity and equality of taxation and taxation based upon 30 per cent of fair cash value. Since this action is a declaratory judgment action, such a pronouncement by this honorable court would have no executory ramifications and would require no tax refunds, additional payments, recomputations or

other disruptive or time-consuming acts, but would have a completely salutary impact upon future assessments and taxation procedures. All officials would be charged with awareness and in fact aware that they have no option to deviate from constitutional requirements, or substitute at their pleasure other standards or considerations for those set forth in controlling constitutional and statutory law.

Appellants, in their brief, explore at length collateral problems in relation to this agricultural classification, pointing out the limited number of properties, the good faith of the Board, etc., and so on, but do not confront the basic question, which is whether or not agricultural classification was permitted under the Constitution and statutes controlling at the time the controversy arose. It should be noted that these agricultural classifications were made without regard to what the value of the land itself might be when utilized for purposes other than agriculture. Indeed, this is the very basis of the classification concept, that one does not consider fair market value, i.e., what a piece of land would bring in the *open* market, but merely considers what the property is worth used in a particular way. For example, if a classification law were passed holding that land used for grazing purposes in Utah would be valued at only \$400 an acre for ad valorem tax purposes, someone could conceivably purchase the land on which the Salt Palace is being built (zoning problems aside), convert it to pasture for a large grey goat there kept tethered, and pay taxes on this prime realty, which would bring thousands

in the open market, on the basis of its classified value rather than its actual value. This illustration is admittedly *ad absurdum*, but it does point out the nature of the problem.

Courts have uniformly held that where a constitution requires uniform assessment and taxation according to a given standard of value that classification is unconstitutional. For instance, in *Real Foot Lake Levee District v. Dawson*, 97 Tenn. 151, 36 S.W. 1041, 34 L.R.A. 725 (1896) a plan to impose a simple tax of X dollars per acre on land was struck down because the true value requirement necessarily implies different tax on different lands since common sense suggests all would not have equal market value. In *Atlantic & N. C. R. Co. v. Cartaret County Comm'rs*, 75 N. C. 474 (1876) a law which provided that certain classes of property should not be valued for tax purposes below a specified sum was invalidated as violative of the market standard. Many other cases have simply held where constitution requires taxation of property in proportion to its value neither the legislature nor administrative officials may divide property into classes and place a specified value on each, whether or not such classifications are arbitrary or based upon a conscientious effort to determine average or median or typical values of properties. See, for example, *Hawkins v. Mangam*, 78 Miss. 97, 28 So. 872 (1900); *Lively v. Missouri K. & T. R. Co.*, 102 Tex. 545, 120 S.W. 852 (1909); *Mahoney v. City of San Diego*, 245 Pac. 189 (Cal. 1926); *Fruitgrowers Express Co. v. Brett*, 94 Mont. 281, 22 P.2d 171 (1933).

There is a Utah decision which considered the question of classification of property for tax purposes. After recognizing the general rule that all presumptions must be exercised in favor of constitutionality of a statute, it still struck down a classification statute as being repugnant to Utah Const. art. XIII, §§ 2 and 3. There is curious dicta in the case which suggests that classification per se might not be precluded in this jurisdiction so long as all classes are taxed at the same rate, but discrimination is very purpose of classification. *Stillman v. Lynch*, 56 Utah 540, 192 Pac. 272, 12 A.L.R. 552 (1920). More significant in this context even though older is *State ex rel Cunningham v. Thomas*, 16 Utah 86, 50 Pac. 615 (1897). The court held:

All taxable property within this state must be assessed and taxed and valuation fixed at its actual cash value or as near such value as is reasonably practical.

There follows a fairly comprehensive listing of the cases dealing with the question of whether or not agricultural lands may be assessed at different rates than lands used for other purposes. Both Cooley and the American Law Report Annotations summary (111 A.L.R. 1486) (1937) state that the better and general rule is that such classification violates constitutional requirements of uniform assessment "since such land may be worth more than its value as agricultural land." 1 Cooley, *Law of Taxation* § 158 (1924). Consistent with this rule are the following: *Monaghan v. Lewis*, 5 Pa. 218, 59 Atl. 948, 10 Ann. Cases 1048 (1905); *Smith v. Americus*, 89 Ga. 810, 15 S.E. 752 (1892); *Cary v. Reben*, 88

Ill. 154, 30 Am. Rep. 543 (1878); *Shuck v. Lebanon*, 197 Ky. 252, 53 S.W. 655 (1899); *Opinion of Justices*, 97 Me. 597, 55 Atl. 827 (1903); *Zanesville v. Richards*, 59 Ohio St. 589 (1855); *Saltonstall v. Board of Review of Cheboygan*, 132 Mich. 196, 93 N.E. 154 (1903); *Custer County v. St. Louis S. F. Ry. Co.*, 207 P.2d 774 (Okla. 1949), (this case is unusual in that an attempt was made to discriminate against rural properties); *State Tax Comm'n v. Wakefield*, 161 Atl. 2d 676 (Md. 1960); *Boyne v. State*, 80 Nev. 160, 390 P.2d 225 (1964); *Board of County Comm'rs of Canadian County v. State Board of Equalization* and eleven sister cases, 363 P.2d 242, et seq. (Okla. 1964).

The Maine and Nevada cases contain particularly interesting language.

There is a line of Missouri cases, some before and some after a constitutional amendment. The later ones, with controlling constitutional language not dissimilar to our own, belong in the line above-quoted. See, for example, *Griswold v. O'Brien*, 89 Mo. 631, 1 S.W. 763 (1886).

South Dakota also has a before-and-after line of cases. Prior to the constitutional amendment, when uniformity of assessment and taxation were required, the cases were consistent with those above listed. *Simmons v. Erickson*, 54 S.D. 429, 223 N.W. 324 (1929); *Chicago R. I. & P. R. Co. v. Monaghan*, 54 S.D. 432, 223 N.W. 344 (1929). After an amendment which permitted classification, a contrary result followed. See *Great North-*

ern R. R. Co. v. Whitfield, 65 S.D. 173, 272 N.W. 787 (1937).

In *Hamilton v. Fort Wayne*, 40 Ind. 491 (1872), the philosophy of the above cases was recognized but a defect in the statutory language in question necessitated a contrary decision.

Cases permitting classification but doing so based upon permissive constitutional language at variance with our own include the following: *Leicht v. Burlington*, 73 Iowa 29, 34 N.W.494 (1887); *Daly v. Morgan*, 60 Md. 460, 16 Atl. 287, 1 L.R.A. 757 (1888); *Dickinson v. Porter*, 35 N.W.2d 66 (Okla. 1948) overruled prior decision 31 N.W.2d 110); *Switz v. Kingsley*, 37 N.J. 566, 182 Atl.2d 841 (1962).

In *State ex rel Lyman v. Stewart*, 58 Mont. 1, 190 Pac. 129 (1920) a tax was upheld which was laid solely upon agricultural properties. Considerations not here present were determinative.

The antiquity of some of these cases illustrates the fact that this problem is, like the poor, ever with us.

In connection with this problem, it should be noted that on November 5th last preceding the electorate of this state amended the constitution to provide that agricultural lands might be assessed according to a classified value; i.e., the value of such lands would have as farm lands, rather than at their fair market value. A number of observations should be made in relation to

this action of the electorate, the most obvious being that if it was necessary to pass a constitutional amendment to permit agricultural classification, then such classification was not permissible prior to the time the amendment was passed.

The contention might be made that the passage of this enactment rendered moot this point of the lawsuit. We would respectfully suggest that such contention must fail for the following reasons:

(1) Whatever the law might become in the future, the action arose when there was no basis for classification in either constitutional or statutory law.

(2) The provision passed by the electorate is *permissive and* does not in itself change the law, but *merely entitles the legislature to promulgate whatever law it sees fit*. The legislature has not yet promulgated such a law. It is not certain what form of law it will promulgate, if any, and the situation is therefore like that found in *Southern Pacific Co. v. Cochise County*, 92 Ariz. 395, 377 P.2d 770 (1963), where the constitution permitted classification, but the legislature had not enacted implementing legislation and therefore property classification for purposes of assessment and taxation was not (and in Utah, at the time of this writing, is not) permissible.

(3) The constitutional amendment would permit the *legislature* of the state to classify agricultural properties for tax purposes, but nothing therein can be construed to give this power to county commissions.

(4) Most significantly, the basic problem of classification, explicit or implicit, creating a variance from the constitutional standard of fair market value, remains with us. Even if the legislature does implement the agricultural classification amendment, the same problem could arise when state or local taxing authorities attempt to classify property on the basis of use in industry or mining, or ownership by widows or veterans, or any of a hundred of the conceivable grounds.

Although the illegal agricultural classification attempted by the Utah County Commission was a flagrant violation of the constitution and the inherent powers, it is only a single facet of the total abandonment by these officials of the constitutional directives in their equalization proceedings. We would respectfully suggest that there is a total dearth of evidence in the record to support the court's finding (R. 189) that the County Board attempted to adhere to the requirements of the constitution or that it based its deliberations on sales data or other relevant information.

While the record is clear that the Utah County Board of Equalization completely abandoned the constitutional fair market value, it is not clear as to what standards were adopted. It would seem that the Board proceeded in an irregular and unsystematic manner, relying on all manner of extralegal and extratechnical factors, such as pre-existing valuations of a decade's vintage and the personalities and economic situations of those appearing before it. The degree of the Board's departure from any realistic attempt at valuation is

illustrated vividly by reference to Defendant's Exhibit No. 4. This exhibit shows the original values arrived at by the state appraisal teams, and their subsequent fate.

A simple computation from this exhibit reveals the following: In relation to 328 of the 716 parcels about which full information is available in the exhibit, or in 45.8 per cent of the cases, the county board reduced the assessment to less than half of that determined by appraisal, in most of these instances to substantially less than half, and in some cases (ex.-E-384-A, E-497-1, E-587-D, E-739, E-750-1-1, F-468, F-1495-18-A, G-647, G-1498, G-2107) the reduction was over 80 per cent. In 116 instances, or 16.2 per cent of the total, the board simply halved to the nearest dollar the assessment before it, and in 63 additional instances, or 8.8 per cent of the total, dropped the assessment to slightly above half of the original. In only 209 cases, or 29.2 per cent of the parcels, was the board's adjusted valuation less extreme, and in most of these instances it represented reductions of 20 - 30 per cent of the original assessment.³

While we submit that there is more than sufficient admitted evidence in the record to show that abandonment and deviation by the County Board, the proffered testimony of Augustus B. C. Johns, Jr., a recognized expert in the appraisal field (Tr. 272-273) should remove the last vestige of doubt.

³ To cite just one particularly telling specific example of the criteria and processes utilized by the Board of Equalization is the Board's determination that assessed valuation of the land of the Riverside Country Club was \$100 per acre! (Pl. Exh. 8, p. 54-55)

Prior to Mr. Johns' proffered testimony, another proffer was made (after the court refused to admit testimony as actual evidence). Commissioner G. Marion Hinckley, one of the plaintiffs, testified in this proffer that pursuant to agreement with Governor Calvin L. Rampton he and his fellow commissioners selected certain properties among the subject properties of this action for an independent appraisal to determine whether or not the appraisal conducted by the Utah State Tax Commission was accurate. Mr. Hinckley further testified that they selected *not average properties but properties which he and his fellow commissioners thought were particularly out of line.* (Tr. 271) Pursuant to this agreement, Mr. Johns was retained by the Governor.

Mr. Johns' proffer shows that his testimony would have been that his independent appraisal of these properties, conducted according to expert methods, and without knowledge of the valuations placed upon these properties by either the state or the county, resulted in value determinations strikingly close to those of the state, well within the degree of variance usually found in the profession, and way out of line with, and sometimes even a multiple of, the valuation figures finally adopted by the county. Appraisal is not an exact thing, and some variance is always present, but competent appraisers will vary little (usually within 5 per cent) of their final conclusions.

Mr. Johns would have also testified, based upon his personal knowledge of the real estate market in the area and direct investigation of over one hundred parcels pur-

suant to his employment by the Governor, that in recent years Orem and Provo property values on the type of land valued by the county pursuant to classification at \$500 and \$650 per acre have been fairly level as here indicated:

<i>Area</i>	<i>Price Per Acre Range</i>
Northeast Provo	\$5,000 to \$6,000
Orem (General)	\$2,000 to \$3,000
Orem (West Side).....	\$1,200 to \$3,000

He would have testified further in relation to particular properties, the most interesting of which was located immediately adjacent to the golf course, valued by the Board at \$500 per acre. His testimony would have shown that in May of last year a purchase was made by a Warren Murphy of fifteen acres of such land at an average price of \$5,300 per acre.

Mr. Johns would have additionally testified that, in his opinion, it would not have been possible for the valuations placed by the county upon the golf course and the other properties he examined, to be arrived at through the use of any accepted appraisal techniques or procedures. He would have testified similarly that the \$500-\$650 value range placed upon agricultural lands through the classification bears no relationship and has no reference whatsoever to the actual values of the lands concerned.

The entirety of Mr. Johns' proffer (Tr. 280-288) is recommended to the court for its perusal. These statements assume additional weight when considered in the frame of reference of his exceptional background, experience, and qualifications, which were summarized by

him to the proffer, and his reputation among his peers, which is equally imposing.

We respectfully suggest that the court erred in excluding this testimony and that it was obviously probative, particularly when the whole chronology in the matter is considered. The trial court expressed concern when making its exclusion that allowing Mr. Johns to testify might lead to a "parade of experts" coming to the stand with confusing and contradictory testimony. We would respectfully submit that it would not have been possible, for obvious reasons, for plaintiffs to secure an expert witness with anything resembling Mr. Johns' stature, to defend the County Board's figures as tending to reflect market value. These figures are so far out of line with the actual market values that no reputable appraiser would have supported the Board's actions if he had regard for his professional reputation. If the plaintiff did perchance offer a rebutting expert, the court could easily have weighed the testimony of both.

We respectfully suggest that much of the testimony of Mr. Johns merely affirms and underscores evidence otherwise in the record, and some of it is of so obviously true and generally accepted as true, that the court could well take judicial notice of it. While we believe that the lower court clearly erred in excluding this testimony and that this court should consider the same in its final determination, it is not the desire of any of the parties that the case be remanded for additional evidence, in view of the acute time pressures and the public significance of the controversy. We would suggest that

even without Mr. Johns' testimony the record clearly supports respondent's contentions that the County Board of Equalization did abandon the constitutional and statutory test of equal and uniform valuation according to fair market value, both generally and specifically (in its adoption of an agricultural classification), and that the court can so find from the record as it now exists.

Appellants dwell at length on the fact that the County Board of Equalization exercised its powers in 700 of the 1,200 cases that it considered and refused to grant any relief in the other 500. An examination of the county minutes, however, will show that in many instances when the county refused to grant requested adjustments, the requests involved buildings or lands not part of those which were recently revalued in connection with the state's appraisal program, and that the County Board typically granted relief, usually (as will be pointed out below) extensive relief, when petitioned in relation to land in Provo and Orem. In fact, the record clearly evidences total abandonment in most instances by the Board of the constitutional and statutory standards of fair market value when dealing with this land.

The description on Pages 23 and 24 of appellants' brief of the concern about the agricultural classification and similar problems as "diversionary tactics conceived after the fact" is completely without merit. Indeed, the record clearly shows that these deviations were the *sine qua non* of the entire action — but for these deviations there would have been no request for cooperation and restoration of the original values, no interven-

tion, no lawsuit. We also suggest that careful examination of the pleadings, pretrial order and the remaining parts of the record will show that these issues were properly before the lower court and are properly before this court on appeal.

Also lacking in merit is the inference that the fact that State Tax Commission personnel sat with the County Board of Equalization during the 1967 hearings somehow sanctions the Board's actions. The record clearly shows (Tr. 204-205) that these personnel were instructed only to offer technical assistance and to attempt no substantive intervention into the Board's deliberations. Controversy arose soon after these hearings, indeed during the latter part of them, and the suggestion that these personnel "did not communicate . . . to the Commissioners" . . . their "feeling of impropriety" is noteworthy to say the least.

We respectfully further suggest that the argument advanced in the first full paragraph on Page 25 of appellants' brief is not only of questionable merit but actually harmful to appellants' position. If the lower court cannot declare void in this type of an action assessments based upon an illegal agricultural classification, it then follows *a fortiori* that the court cannot declare void, as it did at the instigation and urging of appellants, 16,300 assessments which had been accepted and acquiesced in by all affected parties (state officials, local officials and taxpayers) and which were the basis of the actual taxes, never protested, paid during the year 1967 on these properties. This argument is a Pandora's box, which we

anticipated appellants would avoid like a contagious disease, since it is totally inconsistent with their contention in relation to the reappraisals. It appears to be tangential to the central issues of the cases, and of dubious validity, but we have no objection to the court's consideration of it, since such consideration can only work to the benefit of respondent.

Counsel for appellants emphasized in his argument before the lower court, and again in his brief before this honorable court, the good intentions and miscellaneous bona fides of the County Board of Equalization. Respondent has not addressed itself extensively, either below or before this court, to these intentions, feeling that whether or not the County Board acted in good faith is not really relevant. If it used wrong valuation standards and made illegal adjustments in good faith, the state's right to correct these errors is just as solidly present as it would be had the abandonment of the constitutional standard and erroneous adjustments resulted from bad advice, gross negligence or even deliberate maliciousness. As stated in a leading Arizona case:

There is no indication of any dishonest motives on the part of any of these officials. We are satisfied there were none but if the result of these intentional acts is discrimination the assessments cannot stand irrespective of motives. *Sparks v. McCluskey*, 84 Ariz. 283, 327 P.2d 295 (1958).

It should be noted, that even though respondent has not challenged (and does not now formally challenge) the good faith of appellants, such good faith is not all that obvious from the record. The lack of cooperation

evidenced by appellants from the beginning; the incredible deviation from the valuations arrived at by state appraisers using the most current and generally accepted appraisal techniques; the rush to get the valuations based upon the county adjustments out; the refusal of appellants to cooperate with or accommodate the Commission in any way in its efforts to work out an interim solution to the problem which would make possible the ultimate collection of whatever tax was finally determined to be appropriate (such collection now being unfeasible no matter who wins); the making of certain representations at the hearing before this court on a motion for extraordinary relief at the outset of the litigation; and the dwelling on arguments about pressures of time and space *which arose after the inception of the controversy* (see appellants' brief, pp. 20-21), suggest that the appellants' primary interest during the time immediately preceding and following the filing of this action was not to work out the problem in the best interests of all concerned in an open and cooperative manner, but rather to collect taxes based upon their own valuations in such a way as to make most difficult any recouping of additional monies should the ultimate issue be resolved in the state's favor. Illustrative of this attitude is the frivolous testimony of the Utah County Auditor (Tr. 46) to the effect that only two persons could work on the assessment roll books at a time, when the physical evidence (Plaintiffs' Exh. 9) presented shows that the pages of this book are of a looseleaf nature and could be removed at will. We will extend this discussion no further, however, because the good faith or lack thereof of any of the appellants or, in-

deed of any persons herein involved, is not of cardinal significance. What is important is whether or not actions taken were consistent with constitutional and statutory standards, and whether such actions represented proper exercises of delegated powers. Plaintiffs' posture of wounded innocence does seem, however, somewhat incongruous.

The power of the State Tax Commission to correct valuations within a county determined by it to be erroneous is clear (see Point I) and not dependent upon bad faith, gross deviation from the norm, requests for adjustment, or any other extraneous circumstances.

We therefore urge this honorable court to:

(1) Affirm the decision of the lower court in relation to the agricultural classification system;

(2) Specifically rule that county, as well as state, officials are bound by the constitutional standards of uniform and equal assessment and taxation and assessment according to fair market value in exercising assessment and equalization powers, and that the Utah County Board of Equalization in 1967 deviated from these standards.

POINT V

THE SOLUTION PROPOSED BY APPELLANTS DOES NOT SOLVE, NOR DOES THE OFFERED DISPOSITION DISPOSE OF, THE FUNDAMENTAL PROBLEM OF ASSESSMENT INEQUALITY, AND SHOULD BE REJECTED IN FAVOR OF A BROADER, MORE REASONABLE RESOLUTION WHICH IS CONSISTENT WITH CONTROLLING LAW

AND WHICH WOULD LAY THE BASIC
PROBLEM TO REST BY WORKING EQUITY
THROUGHOUT THE STATE.

If there is one aspect of this case about which all parties are in agreement, it is that there is at the present time considerable inequity in ad valorem taxation in the state of Utah. Disparity exists within classes of property, between classes of property and between different parts of the state geographically. In general, taxes are highest on personality and utility properties and lowest on rural agricultural realty. It is apparent that action needs to be taken to eliminate, in the interests of equality and adherence to law, these discrepancies. The only viable program in the state which is working toward solution of these problems, that of the Utah State Tax Commission, was dealt a serious blow in the lower court when the cyclical reappraisal program conducted pursuant to Section 59-5-46.1, Utah Code Annotated, 1953, was found (erroneously, we respectfully suggest) defective in implementation and valuations made thereunder voided.

Appellants urge upholding of this ruling, but offer no meaningful program of their own to solve the Utah County problem. The inference is that the inequality should be allowed to exist indefinitely, and indeed worsen, until some unspecified time in the great blue beyond when the Commission is able to offer a "plan" meeting certain unidentified criteria which would solve the problem, preferably concentrating elsewhere than in Utah County. This is no solution at all; if adopted, the perpetuation of

existing problems will be assured. Some residents are shouldering substantially more than their share of the burden, and there is little to be said for continuing this condition any longer than necessary. Further, there are additional lawsuits already filed, as pointed out in respondent's initial brief, and if the basic problem is not now solved a multiplicity of litigation is more than a remote possibility. We would respectfully suggest, for the reasons set forth in the initial brief, that the part of the lower court's decree voiding the appraisal program and valuations arrived at thereunder be reversed, or, in the alternative, that this court by its edict require state-wide uniformity within a given time (see Point IV, initial brief).

This last approach appears particularly attractive when the alternatives are considered:

(1) Sustaining the lower court's ruling as to the invalidity of the assessments in question, which could only make a bad situation worse by destroying the only effective program now working towards uniformity and equality, and giving local officials a *carte blanche* to ignore the controlling law and continue to engage in which Mr. Morrill referred to as "competitive undervaluation";⁴ and

(2) Simply reversing the lower court's declaration in invalidity, which would allow the State Tax Commission to proceed with due diligence in its systematic state-wide reassessment program. The effectiveness of this

⁴ Morrill, Denis R., *Property Tax Assessment and the Utah Constitution - A Taxpayer's Dilemma*, *supra*.

remedy would depend to a great deal on the legislature making sufficient funds available to permit an effective attack on the problem (there is considerable grounds for optimism here) and upon the effective, cooperative effort of local officials (there is less cause for encouragement in this particular, because of the limitations in monies and technically trained personnel in the counties — particularly the smaller ones — and because of pressures to keep assessments down).

CONCLUSION

Defendant is painfully cognizant that the court is being presented with a rather large bundle for its consideration. The record is long and somewhat cluttered, the briefs extensive, the issues complex. We are equally cognizant, however, that these issues are of the highest public importance, and are reluctant to jeopardize their full and thorough consideration through a mechanical effort to shorten the record or simply the argument. We have, however, made an effort to focus the attention of the court on the most significant problems here presented.

The difficulties connected with the case are further compounded by the difference in emphasis placed upon the facts (in relation to which there is very little basic disagreement) by respective counsel since the initiation of the lawsuit.

We submit that controlling law clearly provides that the State Tax Commission has supervisory power over county officials in all valuation, assessment and taxation

functions, including the power to adjust assessments *within* a county; that county boards of equalization are bound in their deliberations by constitutional and statutory standards of fair cash value and uniformity and equality of taxation, and may not classify properties in an effort to defeat these standards; that the Utah County Board of Equalization in its 1967 sittings deviated in a large degree from these standards and from the procedural requirements set forth in Section 59-7-1; that the Commission, in its subsequent reassessments acted in accordance with law; that those statutes which define the Commission's powers and set forth the procedures for exercising this power should be liberally interpreted to effectuate the legislative intent of insuring just, fair and uniform taxation; that the systematic statewide reassessment program of the Commission, working toward uniformity and equality, should be sustained and valuations arrived at through this program validated and upheld or, in the alternative, that this honorable court should order uniform compliance throughout the state with the constitutional and statutory provisions prescribing uniform and equal taxation of all properties based upon fair cash value. The lower court recognized many of these propositions; insofar, however, as its decision deviated therefrom, we respectfully submit that its ruling should be modified.

This case can, and we respectfully submit should, be considered from two vantage points:

(1) As a specific controversy which arose in 1967 between two levels of government;

(2) As a problem of widespread assessment inequality, of great magnitude and duration, of which the precipitating controversy is only a small part.

We realize that a case in which an appellate court properly looks beyond the specific parties involved, and the transactions between them, in its deliberations is somewhat out of the ordinary. This is, however, such a case. We respectfully urge this honorable court to exercise its powers to effect a full and meaningful solution.

Respectfully submitted,

VERNON B. ROMNEY

Attorney General

M. REED HUNTER

Special Assistant Attorney General

Attorneys for Respondent