



CONstitutional CONcepts

Number 5

A series of condensations of the scholars' research papers prepared by the Illinois Constitutional Research Committee which was appointed by Governor Richard B. Ogilvie to furnish background material for delegates to the Constitutional Convention.

TAXATION AND THE CONSTITUTIONAL CONVENTION

Glenn W. Fisher

Should taxes be earmarked for specific purposes?

Can our legislators be trusted with wide taxing powers or should they be constitutionally restricted?

What revenue proposals are likely to be presented to the Constitutional Convention?

Dr. Glenn W. Fisher of the University of Illinois discusses the controversial problem of a revenue article in his paper, "Taxation and the Constitutional Convention." Commissioned for the Governor's Constitution Research Group, this paper will be one of the background materials for the Constitutional Convention delegates.

This is a summary of the original, and does not purport to contain all the detail of the original. (See the back page for further information.)

Revenue will be one of the most controversial issues faced by the members of the constitutional convention. Delegates will be torn between the obligations to write revenue provisions which will be satisfactory in the long run and pressures to write detailed "legislation" which reflect the demands of immediate interests.

Delegates will not be able to disregard demands of the various organized interest groups since those groups will have an important voice in whether or not the draft constitution is accepted by the people. Furthermore, the recent adoption of the income tax has focused general public attention upon revenue matters and many voters will ask how the proposed new constitution will affect their tax liabilities before deciding how to vote. Major

issues will involve the classification of property, sales tax exemptions and income tax limitations.

Arguments For a Simple Provision

There are strong arguments in favor of writing a very simple, general revenue provision. In fact, the Model Constitution prepared by the National Municipal League and the constitutions of four states contain no revenue article at all. The power to raise revenue for public purposes is an essential element of government sovereignty, and any provision purporting to grant revenue power acts as a limitation upon the revenue power of the state legislature.

The arguments in favor of a simple, non-restrictive

revenue article are based upon the belief that elected representatives can be trusted to reach satisfactory decisions and that, in the long run, attempts to write detailed provisions concerning tax structure seldom have the intended effects.

Problems Raised By 1870 Provision

The most important provisions dealing with revenue in the present constitution were carried into the 1870 Constitution with relatively little change from their 1848 form. Undoubtedly, the authors intended to establish the property tax—levied at uniform rates upon all property, tangible and intangible, personal and real—as the major source of revenue for both state and local government. One provision specifically states that the legislature retains its power to require other objects or subjects to be taxed, but, in 1932, the Illinois Supreme Court interpreted this clause to the effect that only property, occupation and franchise or privilege taxes could be levied. Until this doctrine was disavowed to uphold the income tax act of 1969, this decision tended to distort drafting of tax laws and to confuse policy discussions as attention was directed toward constitutional questions rather than policy issues.

The property tax itself has long been far different from that envisioned by the drafters of the present constitution. The theory of taxing all property not exempted by law at a uniform rate may have been reasonably sound in a simple agricultural economy, but is not sound in a complex industrial economy. Taxation of intangible property would amount to double taxation upon some kinds of wealth. Many kinds of tangible and intangible personal property are difficult to locate or to assess, and full taxation of certain kinds of real estate at uniform rates has economic and political effects which are considered intolerable by many.

Adoption Without Constitutional Provision

The constitution has distorted, but has not prevented, adoption of the property tax to present day conditions. Very little intangible property is assessed in Illinois. Household goods are not assessed in Chicago and are assessed haphazardly elsewhere in the State. In Cook County there is an administratively decreed system of classifying real estate. Downstate there are less publicized, less systematic classification systems and assessments are often negotiated in an effort to attract or retain a desirable industrial or business establishment.

The Illinois Supreme Court has been unable or unwilling to require that the property tax be administered in full compliance with the constitution. Two factors do much to explain this. First, courts act only upon cases before them and often there is no one with both the legal standing and economic interest to justify bringing suit. Second, courts are reluctant to be responsible for the kind of chaos that would result from an attempt to correct this situation.

Occasionally, as in railroad cases, courts order that the assessment of a particular property be reduced to the average level of other properties; but to order that all property be reassessed and that all omitted property be added to the tax roll is beyond the capacity of the courts

to supervise and beyond the capacity of local government to attain with existing personnel and organization. Further, if it were attained, it would bring about shifts in tax burdens and political power which would have massive economic and political repercussions.

In Support of Restrictive Provisions

Perhaps the strongest arguments in favor of writing detailed prescriptions and limitations into the constitution are based upon the assumption that some matters, of which revenue is foremost, involve such temptation to short run irresponsibility that legislators must be limited by the constitution writers who are able to take a more detached, long run view of what is fair and reasonable taxation.

This view is strongly supported by those who believe they have a chance of getting their own particular view of what is fair and reasonable written into the constitution. Constitutional limitation or prescription can definitely have an immediate effect upon the tax structure, and thus upon the tax burden of every individual and organization in the State. It is inevitable that there will be strong pressures, from organized groups and from the general public, to place specific limitations upon the forms of taxes that can be used and upon the rates that can be levied.

Provisions Likely to be Proposed

There will probably be hundreds of proposals submitted to the forthcoming Convention and it is difficult to predict which among them will be given serious consideration, but there are several issues which can be singled out for major importance.

(1) There appears to be widespread agreement that intangible personal property should be exempted from taxation or, at least, that the legislature should be given power to make such an exemption. This judgment is based upon the grounds that taxing some kinds of intangible property results in double taxation of economic wealth and upon the practical grounds that administration of the tax is very difficult.

(2) The situation regarding tangible personal property is less clear cut. There is an impressive body of opinion that taxation of ordinary household goods imposes a cost in administrative expenses and taxpayer irritation which is greater than the value of the revenue received, but there is a less prevalent, but strongly held, opinion that everybody should directly pay some property taxes.

(3) In many states automobile, boat and aircraft registration fees or local license taxes are considered to be "in lieu" of property taxes. Administration of license taxes is easier and the funds can be earmarked for the development of facilities used by the vehicles involved.

(4) The question of exempting or classifying other tangible personal property, largely of business and farm nature such as machinery and inventories, is far more controversial. Arguments revolve around the proper role of business taxation, its economic incidence and the effect it has upon the economy of the State.

(5) Some years ago, real estate classification was widely hailed as a means of making the property tax more

"scientific" and better adapted to modern conditions by permitting adjustments for the different economic character of various kinds of property. Unfortunately, there is little agreement as to principles utilized in making such a classification. The argument that income earning property should be taxed at a higher rate than non-income property can be made to sound very plausible, but so can the reverse argument of lower rates on the tools of production than upon "idle" wealth. Analysis of real estate classification systems, in those states that have adopted them, suggest that the classifications utilized are more closely related to the political power of property owners and financial needs of localities than to any scientific principle of taxation.

In Illinois the question of real estate classification is unusually controversial because of the existing de facto classification system in Cook County. This system, which generally favors small home or apartment owners at the expense of business property owners, can be defended on grounds of its effect upon the development of the metropolitan area. In the Convention debate these developmental factors will likely be overshadowed by the tremendous political implications of the system. The possible invalidation of the present system by the courts and the resultant sharp rise in the property tax of Chicago homeowners is an ever-present threat to political incumbents in Cook County.

(6) One of the major issues in the Convention will undoubtedly be the exemption of food from sales taxation. Traditionally, the exemption is advocated to reduce the regressivity of the tax and its heavy burden upon large families. It would have this effect, but at a heavy cost in revenue yield and administrative simplicity. In recent years the idea of a per capita credit for sales taxes paid has found more favor with many tax students. Administration is simple, especially if the State also levies an income tax so that administration of the sales tax credit and the income tax can be combined.

(7) The income tax has been a controversial issue in Illinois for many years. Passage of an income tax act by the 1969 Legislature represents a substantial improvement in both equity and revenue adequacy of the Illinois tax system. The fact that the Illinois Supreme Court has approved this act and that it will be in operation before

the Convention convenes will probably blunt the force of any effort to prohibit it, but serious attention will undoubtedly be given to placing some form of limitation upon income taxation. Among the possibilities are: a) Prohibiting graduated rates; b) Providing maximum rates; c) Requiring corporation and individual rates to be the same; d) Specifically authorizing the use of the federal income tax base for the State, and providing that changes in Federal law may be automatically incorporated into State law; e) Prohibiting local income taxes; and f) Specifically permitting an income tax credit for property taxes paid.

Illinois levies many taxes other than the three major types already discussed. Among these are inheritance taxes, specific sales (excise) taxes, motor vehicle license taxes, business license taxes and corporate franchise taxes.

There will undoubtedly be proposals to prohibit, limit the rate of, or define the base of many of these. There will also be proposals to earmark revenue from particular taxes to specific purposes, as well as to forbid the same. If the delegates seriously entertain most of these proposals they will be taking upon themselves the task of designing a complex, interacting tax system. In all probability they will fail to produce a system that will work satisfactorily as conditions change and they will have, in effect, dispersed the tax power to the courts, individuals, and groups with a knowledge of and interest in the situation.

Summary

Few issues the Constitutional Convention will deal with are more controversial or more important than revenue. Delegates must steer a course between the demands for a simple, flexible revenue article that will permit legislative adaption to changing circumstances and a detailed article which limits the legislature's power and prescribes details of the system. Steering too close to the first position risks alienating special interest groups and those members of the general public who look to a new constitution as a means of improving their tax position. Steering too close to the second risks saddling Illinois State Government with constitutional provisions which will, in the long run, make adequate and equitable taxation difficult, if not impossible.

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WHY these DIGESTS?

Preparing for a constitutional convention requires advance background and research. Accordingly, Governor Richard B. Ogilvie called upon a group of scholars to prepare research papers for the use of delegates and appointed Dr. Samuel K. Gove, director of the Institute of Government and Public Affairs of the University of Illinois as project director. Sixteen papers on various aspects of state government are being assembled. These will be issued in condensed form in continuing issues of Constitutional Concepts. A sincere attempt has been made to retain the concepts and ideas of the writers whose papers run from up to 80 pages or more. Any errors which result from the condensations clearly

are not those of the scholars originating the research.

As no public funds were available to the Constitution Research Group, the Union League Club of Chicago made an initial grant of \$10,000 to the group so the work might proceed. The Club took no part in the selection of the scholars nor the topics to be researched; made no effort to influence either research or conclusion; and did not, in any manner, direct the group. Nor does the Club necessarily endorse any suggestions, proposals or ideas expressed by the scholars.

This is one of a series of condensed research papers, prepared and published as a public service by the Public Affairs Committee of the Union League Club of Chicago.

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