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# PROPERTY TAX CLASSIFICATION AND EXEMPTION: A PROBLEM IN NORTH CAROLINA CONSTITUTIONAL LAW

HENRY W. LEWIS\*

## INTRODUCTION

The North Carolina Constitution permits legislative classification of property for taxation but requires uniformity within classes.<sup>1</sup> It exempts from taxation property owned by the state and by municipal corporations;<sup>2</sup> and it gives the General Assembly discretionary power to grant enumerated exemptions of the sort commonly found in state constitutions.<sup>3</sup> The 1957 Commission to Study the Revenue Structure of the State, conscious of the increasing demands for revenue and the dangers of reducing the property tax base, wrestled with two problems within this constitutional framework: Does the power to classify include the power to exclude from the tax base property not entitled to exemption? May the General Assembly delegate to local units of government the power to classify and exempt?<sup>4</sup> This paper summarizes the research on these problems presented to the Commission.<sup>5</sup>

When collected, any tax on property amounts to a "taking of a part of the taxpayer's wealth, represented by the property he owns, for the needs of government."<sup>6</sup> In defining "property" for tax purposes the North Carolina Supreme Court has said that it "extends to every aspect of right and interest capable of being enjoyed as such upon which it is practicable to place a money value."<sup>7</sup> Traditionally, there are two kinds of property taxes: (1) A general property tax, that is, "a tax on all

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<sup>1</sup> N.C. CONST. art. 5, § 3 (1935).

<sup>2</sup> *Id.* art. 5, § 5 (1935).

<sup>3</sup> "The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries, and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars. The General Assembly may exempt from taxation not exceeding one thousand dollars (\$1,000.00) in value of property held and used as the place of residence of the owner." *Ibid.*

<sup>4</sup> TAX STUDY COMMISSION OF THE STATE OF NORTH CAROLINA, REPORT (1958).

<sup>5</sup> The research was presented to the Commission in a series of oral and written reports and finally summarized in LEWIS, BASIC LEGAL PROBLEMS IN THE TAXATION OF PROPERTY (1958).

<sup>6</sup> *Bemis Hardwood Lumber Co. v. Graham County*, 214 N.C. 167, 170, 198 S.E. 843, 844 (1938).

<sup>7</sup> *Hildebrand v. Southern Bell Tel. & Tel. Co.*, 219 N.C. 402, 408, 14 S.E.2d 252, 256 (1941).

property regardless of its nature, at a uniform rate throughout the jurisdiction imposing the tax."<sup>8</sup> (2) A classified property tax, that is, a tax on property segregated into groups or types through application of different "effective tax rates"<sup>9</sup> to the various classes.<sup>10</sup>

Until 1936 the North Carolina Constitution required uniform imposition of a tax on all property not specifically exempted, and it also required full value assessment of the property taxed—that is, a general property tax.<sup>11</sup> Since 1936 the constitution has authorized classification,<sup>12</sup> leaving the General Assembly free to define classes and to fix the rates and assessment standards to be applied to each taxed class.<sup>13</sup>

At the present time North Carolina levies no general property tax as a state; it does, however, levy in behalf of the counties and municipalities a tax or set of taxes on selected items of intangible personal property.<sup>14</sup> In addition, the General Assembly empowers and requires counties, cities, towns, and special districts to impose taxes within their jurisdictions on all non-exempt property that has not been classified and taxed under the Intangibles Tax by the state.<sup>15</sup> These taxes on property are the principal source of revenue for all local units of government.<sup>16</sup>

<sup>8</sup> LELAND, *THE CLASSIFIED PROPERTY TAX IN THE UNITED STATES* 3 (1928).

<sup>9</sup> In theory a property owner is concerned not so much with the rate of tax or the standard of assessment chosen as he is with the amount of money he will have to pay in tax. Thus, for example, if the actual market value of a tract of land is \$10,000 the owner is not especially concerned with whether it is assessed at 75% of market value and taxed at \$1.33½ per \$100 of valuation or assessed at 50% of market value and taxed at \$2 per \$100 of valuation. The tax due will be \$100 in either event. From the owner's point of view the *effective rate* is \$1 per \$100 of valuation or 1% of the true value of the property. "By 'effective rate' is meant the per cent which the amount of the tax paid is to the true value of the property." LELAND, *op. cit. supra* note 8, at 41.

<sup>10</sup> *Ibid.*

<sup>11</sup> "Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise; and, also, all real and personal property according to its true value in money. . . ." N.C. CONST. art. 5, § 3 (1924). "All taxes levied by any county, city, town, or township shall be uniform and ad valorem upon all property in the same, except property exempted by this Constitution." *Id.* art. 7, § 9 (1868).

<sup>12</sup> At the general election in 1936 the people approved amendments repealing N.C. CONST. art. 7, § 9 (1868), quoted in note 11, and re-writing art. 5, § 3 (1924). The re-written section is quoted in the text *infra*, page 118.

<sup>13</sup> It should also be noted that under the amended constitution the standard used in assessing property need not be "full value" or "market value" so long as it is proportional or equal in its treatment of the property in the class.

<sup>14</sup> Shares of stock; bonds, notes, and other evidences of debt; accounts receivable; money on hand; money on deposit; money left with insurance companies. N.C. GEN. STAT. §§ 105-199 to -205 (Supp. 1957).

<sup>15</sup> N.C. GEN. STAT. §§ 105-281, -282, -294, -296 to -299, -303 (Supp. 1957).

<sup>16</sup> "The property tax is the major source of revenue of the counties and municipalities in North Carolina and the only source of tax revenue of schools and other special districts. . . . The property tax (including the State-collected intangible personal property tax) provided 90 per cent of all local tax revenue, including the local portion of shared State taxes, during the 1956-57 fiscal year. The local property tax provided 96 per cent of the revenue from taxes levied by the local governments themselves. . . ." TAX STUDY COMMISSION OF THE STATE OF NORTH CAROLINA, REPORT 3 (1958).

## COVERAGE

Before amendment in 1936, the two pertinent provisions of the North Carolina Constitution were phrased in mandatory terms:

Laws shall be passed taxing, by a uniform rule, . . . all real and personal property. . . .<sup>17</sup>

All taxes levied by any county, city, town, or township shall be uniform and ad valorem upon all property in the same, except property exempted by this Constitution.<sup>18</sup>

At a time when these provisions were in effect, the court, in a case questioning the right of a town to tax intangibles, took the position that "when the taxing power is exercised for a public purpose, the Constitution, and not the Legislature, declares *what* property shall be taxed. . . ." <sup>19</sup> Having reached this conclusion the court held that the wording of the quoted sections required taxation of "all real and personal property"—including intangibles.<sup>20</sup> Thus, except as the constitution itself provided for exemptions by an equally potent provision, all real property and tangible and intangible personal property remained subject to mandatory taxation until the amendments of 1936.

In the North Carolina statutes enacted during the life of the former constitutional language there is every indication that—with respect to county and municipal property taxes—the General Assembly accepted the judicial interpretation of necessary tax coverage.<sup>21</sup> It should be noted, however, that the General Assembly did not adhere to the notion that the constitution required the state itself to tax all property for state revenue purposes. On the contrary, in 1921 the state stopped taxing property as a means of raising revenue for state operations.<sup>22</sup> In the 1930's the state returned to the property tax for a brief period and imposed a tax of 15¢ on the \$100 of valuation of property in support of the

<sup>17</sup> N.C. CONST. art. 5, § 3 (1924).

<sup>18</sup> *Id.* art. 7, § 9 (1868).

<sup>19</sup> *Redmond v. Commissioners*, 106 N.C. 122, 128, 10 S.E. 845, 847 (1890). In the context in which the court made this decision, it was plain that it was intended to apply to state and county taxation as well as municipal.

<sup>20</sup> *Redmond v. Commissioners*, *supra* note 19. See also *Smith v. Wilkins*, 164 N.C. 136, 140, 80 S.E. 168, 170 (1913) (dictum). The view of the North Carolina Supreme Court was not universally accepted in other states. 51 AM. JUR., *Taxation* § 154 (1957).

<sup>21</sup> The Machinery Act of 1935, for example, declared that, "All property, real and personal, within the jurisdiction of the state, not especially exempted, shall be subject to taxation." N.C. Pub. Laws 1935, c. 417, § 300. Personal property was defined to include both tangibles and intangibles. *Id.* § 305. The term "intangible property" was defined to mean "patents, copyrights, secret processes and formulae, good-will, trade-marks, trade-brands, franchises, stocks, bonds, notes, evidences of debt, bills and accounts receivable, and other like property." *Id.*, § 2(10). Tangible personalty was defined to cover all personal property not included in the definition of intangibles. *Id.*, § 2(11). And "real property" was given a standard comprehensive definition. *Id.*, § 2(30).

<sup>22</sup> N.C. Pub. Laws 1921, c. 34, § 3.

public school system.<sup>23</sup> But upon abandonment of that levy, local units of government were left with the entire property tax field. Until 1937 the counties and municipalities imposed their tax rates on assessments—of both tangible and intangible personal property as well as real estate—determined much as they are today.

After amendment in 1936 the Constitution of North Carolina was left with a single directive with respect to property taxation: "Taxes on property shall be uniform as to each class of property taxed."<sup>24</sup> This was a significant change from the former phrasing: "Laws shall be passed taxing, by a uniform rule . . . all real and personal property according to its true value in money. . . ."<sup>25</sup> Use of the words "each class of property taxed" in the amended version seems to suggest that the explicit meaning is, "If a class of property is taxed the tax applied to that class must be applied uniformly." If such an interpretation is adopted the legislature is left free to decide whether or not it will include a given class of property in the tax base or leave it untaxed. Such a view, however, would ignore the constitutional section limiting the General Assembly's power to grant exemption from taxation or, at least, subordinate it to the classification section.

#### EXEMPTIONS

The provision of the North Carolina Constitution dealing with exemption of property from taxation<sup>26</sup> remains much as it was when inserted in 1868. In specific terms it exempts all property belonging to the state and to municipal corporations<sup>27</sup> and grants to the General Assembly power to exempt property held for the usually exempting uses,<sup>28</sup> as well as homesteads to a value of \$1,000<sup>29</sup> and any personal property to a value of \$300.<sup>30</sup>

<sup>23</sup> N.C. Pub. Laws 1931, c. 427, § 492.

<sup>24</sup> N.C. CONST. art. 5, § 3 (1935).

<sup>25</sup> N.C. CONST. art. 5 § 3 (1924).

<sup>26</sup> *Id.* art. 5, § 5 (1935).

<sup>27</sup> The constitutional exemption of state property is reiterated in the Machinery Act, N.C. GEN. STAT. §§ 105-271 to -397, especially -296(1) and -297(1) (Supp. 1957), and then, with judicial sanction, the legislature limits the application of the language with respect to municipal property to that used for public or governmental purposes. *Warrenton v. Warren County*, 215 N.C. 342, 2 S.E.2d 463 (1939). Whether the courts would uphold a similar limitation on the constitutional exemption of state-owned property is not settled. See *Weaverville v. Hobbs*, 212 N.C. 684, 689, 194 S.E. 860, 864 (1937) (especially the dissenting opinions of Chief Justice Stacy and Justice Clarkson), *Warrenton v. Warren County*, *supra* at 349, 2 S.E.2d at 467 (concurring opinion of Justice Clarkson), and Coates, *The Battle of Exemptions*, 19 N.C.L. Rev. 154, 171 (1941).

<sup>28</sup> "The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes. . . ." N.C. CONST. art. 5, § 5 (1935).

<sup>29</sup> " . . . The General Assembly may exempt from taxation not exceeding one thousand dollars (\$1,000.00) in value of property held and used as the place of residence of the owner." *Ibid.*

<sup>30</sup> "The General Assembly may exempt . . . wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of

The General Assembly has exercised its exemption powers in two major acts of general application—the Machinery Act<sup>31</sup> and the Intangibles Tax article of the Revenue Act<sup>32</sup>—and in a number of local or special acts as well as in a few other general acts. In general, the provisions of the two major state-wide acts indicate that the legislature has followed the exemption scheme outlined in the constitution,<sup>33</sup> not hesitating, however, to exercise less than all of its exemption authority in specific instances.<sup>34</sup> The only permissive exemption power the General Assembly has completely refrained from exercising is that concerning homesteads.<sup>35</sup>

As already mentioned, in addition to the state-wide statutes in which the legislature has seen fit to make use of some of its power to grant exemptions, there have been instances in which it has exercised that power on a local basis. In 1957, for example, the General Assembly passed a bill declaring a certain church in Richmond County to be a religious organization and thereby exempt from property taxes.<sup>36</sup>

A more troublesome problem is presented by the number of instances in which the legislature—both state-wide and on a local basis—has granted exemption to property not exemptible under the terms of the constitutional grant.<sup>37</sup> (In a few cases the General Assembly has paid lip service to the constitutional enumeration by “declaring” certain properties to be “held for” purposes which would entitle them to exemp-

mechanics and farmers, libraries, and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars. . . .” *Ibid.*

<sup>31</sup> N.C. GEN. STAT. §§ 105-271 to -397 (Supp. 1957) [N.C. Pub. Laws 1939, c. 310].

<sup>32</sup> N.C. GEN. STAT. §§ 105-198 to -217 (Supp. 1957).

<sup>33</sup> Often the statutory language echoes the constitution. For example, N.C. GEN. STAT. § 105-297(8) (Supp. 1957) grants exemption to, “Wearing apparel, household and kitchen furniture, the mechanical and agricultural instruments of farmers and mechanics, libraries and scientific instruments, provisions and livestock, not exceeding the total value of three hundred dollars (\$300.00). . . .” The exemption section of the Intangibles Tax is found in N.C. GEN. STAT. § 105-212 (Supp. 1957).

<sup>34</sup> It should be noted, for example, that property “held” for the various exempting uses is granted exemption only if it is held *by* or *for* institutions or agencies which are themselves “educational, scientific, literary, charitable or religious.” If held *by* or *for* others the property remains taxable. “Any organization claiming exemption, therefore, must bring itself within the statutory type as well as within the constitutional purpose.” Coates, *supra* note 27, at 181.

<sup>35</sup> While this statement is accurate in a strict sense, it should be noted that in 1957 the General Assembly empowered the commissioners of Bertie County to call a referendum on whether the \$1,000 homestead tax exemption should apply in that county. Interestingly, if the vote should favor the exemption the act provides that the exemption is to terminate if the state should ever levy a tax on property. N.C. Sess. Laws 1957, c. 1330.

<sup>36</sup> N.C. Sess. Laws 1957, c. 748. The act does not explain the necessity for this special handling, but it may be that the problem suggested *supra*, note 34, may have been in some way involved.

<sup>37</sup> Thirty-one examples of state-wide exemptions of this kind and thirteen examples of local exemptions of this kind are listed in LEWIS, *op. cit. supra*, note 5, at 21-25.

tion,<sup>38</sup> but such declarations are not conclusive on the courts.)<sup>39</sup> And at the administrative level, apart from constitutional or statutory authorization, there are well-documented cases of informal exemption on a local basis.<sup>40</sup> If invalid under the exemption section of the constitution, can these legislative and administrative exemptions be upheld as proper exclusions from the tax base under the classification power?

### CLASSIFICATION

Classification means selection and definition of groups or types of property before taxation; and to the legislature belongs the right and duty of making the selection and defining the classes. Courts will not strike down legislative classifications if they can be upheld on any reasonable grounds:

In the nature of things, narrow distinctions are sometimes invoked, and if founded on a rational basis and reasonably related to the object of the legislation, the courts will not say that a different result should have been reached or that the differentiation is arbitrary. . . . 'Such differences need not be great.' . . . However, 'mere difference is not enough.' . . . It must be relevant or pertinent as well as rational.<sup>41</sup>

As early as 1913 an attempt was made to authorize the General Assembly to classify all property for tax purposes. That effort failed, and the idea was again advanced—in more limited form—in 1927. That year the legislature submitted to the people a constitutional amend-

<sup>38</sup> For example, N.C. GEN. STAT. § 57-14 (Supp. 1957); N.C. Sess. Laws 1955, c. 589; and N.C. Sess. Laws 1957, c. 661.

<sup>39</sup> In an allied field the General Assembly passed an act characterizing a municipal recreation system as "a governmental function and a necessary expense as defined by Article VII, section 7, of the Constitution of North Carolina." When the issue was presented to the North Carolina Supreme Court, Mr. Justice Seawell wrote: "Whatever enthusiasms may be engendered or fostered in the name of progress, they can be indulged only within the limitation . . . expressed [in the Constitution] and cannot be expanded beyond it either by legislative action or by judicial construction, provided these co-ordinate branches of the Government act within the terms of the political and official trusts committed to them. Of the two, the judiciary has the last say. While the legislative construction of the Constitution is entitled to great weight, it is not binding upon the Court. . . . The ultimate decision as to what constitutes a necessary expense is always for the courts." *Purser v. Ledbetter*, 227 N.C. 1, 4, 40 S.E.2d 702, 705 (1946). To the same effect, but less explicitly, see *Nash v. Tarboro*, 227 N.C. 283, 42 S.E.2d 209 (1947), *Rhodes v. Asheville*, 230 N.C. 134, 52 S.E.2d 371 (1949), and *Britt v. Wilmington*, 236 N.C. 446, 73 S.E.2d 289 (1952).

<sup>40</sup> In preparing its report to the General Assembly of 1959 the Tax Study Commission submitted to the county tax supervisors of the state a questionnaire which developed evidence, for illustrative purposes, of eight cases of such exemption. *Lewis, op. cit. supra* note 5, at 26.

<sup>41</sup> *Leonard v. Maxwell*, 216 N.C. 89, 96, 3 S.E.2d 316, 322 (1939). This was a sales tax case. In the absence of decisions on property tax classifications in North Carolina it is necessary to refer to this decision and to language in occupational and privilege license tax cases: *Charlotte Coca-Cola Bottling Co. v. Shaw*, 232 N.C. 307, 59 S.E.2d 819 (1950); *Roach v. Durham*, 204 N.C. 587, 169 S.E. 149 (1933).

ment designed to permit classification of intangibles, then usually called "solvent credits."<sup>42</sup> When this amendment failed the State Tax Commission promptly suggested another which it described as "broader in scope," one "which would vest in the sound discretion of the General Assembly the authority to adopt at any time such reasonable classification of any particular class of property as it may find to be just and in the interest of a complete and orderly enforcement and administration of the tax laws. . . ."<sup>43</sup> The precise language proposed by the Tax Commission was remarkably direct:

Taxes shall be uniform upon each class of property within the jurisdiction levying the tax.<sup>44</sup>

The proposal actually submitted to the electorate by the 1929 General Assembly, although considerably more detailed, was much less explicit.<sup>45</sup> Again the people rejected the change. In 1933 the movement for a new constitution supplanted the single issue of classification, but it is significant that the taxation article in the draft constitution eliminated the requirement of uniformity. This, it was assumed, left the General Assembly free to classify property at will.<sup>46</sup> Since the proposed constitu-

<sup>42</sup> The text of the change proposed in 1913 read as follows: "The General Assembly may, consistent with natural justice and equity, classify subjects of taxation; and all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax: *Provided*, that no income shall be taxed when the property from which the income is derived is taxed; and, consistent with natural justice and equity, the General Assembly may separate subjects of taxation for State and local purposes." N.C. Pub. Laws, Ex. Sess. 1913, c. 81, § 1(VII). The text of N.C. CONST. art. 5, § 3, as the 1927 amendment proposed would have been rewritten as follows: "Laws shall be passed taxing all real and personal property, including moneys, bonds, notes, investments in stock, and all other choses in action, according to their true value in money. The rate of taxation on real property and tangible personal property shall be uniform within the territorial limits of the authority levying the tax, but intangible personal property may be classified by the General Assembly, which shall prescribe a uniform rate of tax throughout the State for each class. . . ." N.C. Pub. Laws 1927, c. 216.

<sup>43</sup> THE (N.C.) TAX COMMISSION, REPORT 37 (1928). The Commission was interested in the classification of forest lands as well as intangibles. *Id.* at 41.

<sup>44</sup> *Ibid.*

<sup>45</sup> N.C. Pub. Laws 1929, c. 108. The text proposed was as follows: "Taxation shall be ad valorem and uniform as to each class of property. Laws shall be passed taxing, by a rule that is uniform as to each class of property, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and, also all real and personal property according to its true value in money. The General Assembly may adopt such classification of real property and personal property as it may find to be reasonable. . . ."

<sup>46</sup> "It will permit the legislature to encourage, by proper adaptation of the tax system, such socially desirable objectives as more wide-spread home ownership, the development of forestry and the conservation of natural resources. It will permit the legislature to classify property according to its ability to pay, and such a classification will result in placing on the tax books much property which taxpayers now refuse to list. This increase in the value of property listed will offset any decrease in tax revenues created by lowering tax rates on some types of property." GARDNER, THE PROPOSED CONSTITUTION FOR NORTH CAROLINA 59 (1934). The proposed constitution retained the exemption section. *Id.* at 50. Dean Henry Brandis wrote the comment on art. 5 in GARDNER, *op. cit. supra*. See 36 N.C.L. REV. 298, n. 2 (1958).



tion was never submitted to a vote there is no way of knowing how the people would have received this new departure. It was not until the present language of the constitution was approved at the general election of 1936 that the General Assembly was given power to classify property for tax purposes.

A question on which the North Carolina Supreme Court has not been called upon to express an opinion is whether the General Assembly must state specifically what it is doing when it exercises its classification power or whether it may exercise the power indirectly and without explanation. Allied issues, however, have brought forth statements from the court that suggest what its answer would be.<sup>47</sup> Although principles of good statutory draftsmanship suggest that a classification statute should recite the fact that a classification is being made, it is unlikely that the courts would invalidate a proper classification simply because the act failed to meet this formality. This may have a bearing on the validity of some of the questioned exemption statutes.

Once North Carolina took care of the pressing problem of intangible property taxation in 1937, the General Assembly tended not to make explicit use of its classification power. Part of the problem today arises from a general unfamiliarity with this power.

#### UNIFORMITY

Property taxes must be administered under a set of standards or measurements, and these are usually established by constitution or statute. The constitutional standard applicable in North Carolina is uniformity of taxation within classes of property: "Taxes on property shall be uniform as to each class of property taxed."

As a constitutional principle, uniformity demands equality of treatment and equity in result.<sup>48</sup> In property taxation it governs assessment standards as well as rates of taxation, but, constitutionally speaking, it does not require any one assessment standard; it merely requires use of the same measurement for all property within a given class.<sup>49</sup> The

<sup>47</sup> In a privilege license tax case, for example, the court said: "The legislature is not required to preamble or label its classifications. . . . It is sufficient if the court, upon review, may find them supported by justifiable reasoning." *Snyder v. Maxwell*, 217 N.C. 617, 620, 9 S.E.2d 19, 21 (1940). The court has also said that when the legislature exercises its "police power" it does not have to state specifically that it is doing so; the courts will determine the exercise by the effect of the act. *Roach v. Durham*, 204 N.C. 587, 591, 169 S.E. 149, 151 (1933). And in a sales tax case appeared the following language: "When these subjects are segregated by descriptions or definitions with reasonable clearness—the classification reasonable and the distinctions made not arbitrary or capricious—the imposition of the tax is not assailable." *Henderson v. Gill*, 229 N.C. 313, 317, 49 S.E.2d 754, 757 (1948).

<sup>48</sup> *Atlantic & N.C. R.R. v. New Bern*, 147 N.C. 165, 167, 60 S.E. 925, 926 (1908). Cf. *State v. Danenberg*, 151 N.C. 718, 720, 66 S.E. 301, 302 (1909), citing *Gatlin v. Tarboro*, 78 N.C. 119, 121-22 (1878). See also *Leonard v. Maxwell*, 216 N.C. 89, 3 S.E.2d 316 (1939).

<sup>49</sup> 51 AM. JUR., *Taxation* § 162 (1957).

choice of assessment standard or base is within legislative discretion so long as the resulting tax valuations are uniform.

Choosing to use this freedom sparingly, the General Assembly has, in general, adhered to the traditional requirement that all property be valued or assessed for taxation at its true or full value in money.<sup>50</sup> In some instances, especially with respect to classified intangibles, the legislature has, however, authorized credits against full value before the tax rate is applied.<sup>51</sup>

Rates of taxation for classified intangibles are uniform throughout the state,<sup>52</sup> but local rates are permitted to vary from unit to unit so long as they are applied uniformly within a given taxing unit.<sup>53</sup> In rare instances the legislature has permitted local taxing units to impose on certain classes of property, rates different from those applied to other property in the unit.<sup>54</sup>

The setting of uniform tax rates within local taxing jurisdictions has not been a matter of concern in North Carolina, but the setting of assessment standards has become a matter of first importance. When the statute speaks of market value as the required assessment base<sup>55</sup> it is understood that *current* market value is implied. It is generally known, however, that the precision with which this standard is applied varies widely from taxing unit to taxing unit. It is slightly less well known that application of the standard varies among classes of property within individual taxing units.<sup>56</sup> One major variation appears with respect to the concept of what is *current* value. Rather than appraise at 100% of market value for the year in which an assessment is made, some counties select what they consider a "normal" or "average" year in the past and try to value property in terms of prices prevailing during the base year.<sup>57</sup> A second variation appears with respect to the concept of *market* value as the assessment standard. Even in those counties in which market value is used in making appraisals it is not used as the base against which tax rates are applied. It is common practice to adopt some percentage of the appraised market value and use that reduced figure as the assessed valuation.<sup>58</sup>

Most counties use a different percentage of market value in assessing personal property from that used in assessing realty, commonly varying

<sup>50</sup> N.C. GEN. STAT. §§ 105-294, -358, -365, -199, -200, -204, -205 (Supp. 1957).

<sup>51</sup> N.C. GEN. STAT. §§ 105-298(b), -298(c), -201 to -203 (Supp. 1957).

<sup>52</sup> N.C. GEN. STAT. §§ 105-199 to -205 (Supp. 1957).

<sup>53</sup> N.C. GEN. STAT. § 105-294. See *Puitt v. Commissioners*, 94 N.C. 709 (1886).

<sup>54</sup> For example, "agricultural products in storage," as defined in N.C. GEN. STAT. § 105-294.1 (Supp. 1957), and "peanuts in the year following the year in which grown," as defined in N.C. GEN. STAT. § 105-294.2 (Supp. 1957).

<sup>55</sup> N.C. GEN. STAT. § 105-294 (Supp. 1957).

<sup>56</sup> TAX STUDY COMMISSION, REPORT 6-12 (1958).

<sup>57</sup> *Id.* at 6-7. See also, LEWIS, PREPARATION FOR REVALUATION 29 (1956).

<sup>58</sup> LEWIS, *op. cit. supra* note 57, at 30.

the percentage among types of personality.<sup>59</sup> In assessing the property of railroads and public service companies the State Board of Assessment is faced with having to balance three considerations—the acknowledged assessment practices used by the counties for all other properties, the statutory standard of true market value, and the constitutional requirement of uniformity. Thus, once having determined total value, the State Board reduces that figure by a percentage calculated to equalize the utility's assessment with the tax values on property assessed locally.<sup>60</sup>

Recognizing that uniformity is the explicitly prescribed standard for taxation of property within classes, it is pertinent to consider the broader implications of uniformity as a constitutional principle or concept in taxation. The issue can be brought into focus by examining two sections that have been inserted in the Machinery Act since its permanent enactment in 1939. The first, under the title "Agricultural products in storage," was inserted in 1947 and reads as follows:

*If the board of county commissioners of any county shall determine as a fact that any agricultural product is held in said county by any manufacturer or processor for manufacturing or processing, which agricultural product is of such nature as customarily to require storage and processing for periods of more than one year in order to age or condition such product for manufacture, and if such determination is entered on the minutes of such board on or before March 31st in any year, such agricultural product shall be taxed in that year uniformly as a class at sixty per cent (60%) of the rate levied for all purposes upon real estate and other tangible personal property by or for said county and/or the city, town, or special district in which such agricultural products are listed for taxation.*<sup>61</sup> (Emphasis added.)

By indirection, if not by specific statement, this statute singles out for special treatment a certain described kind of property and it uses the language of classification. But does the statute constitute a classification by the General Assembly, or does it merely delegate to the boards of county commissioners authority to make this classification?<sup>62</sup> One commentator has pointed out that the "double use of 'if' . . . points in the direction of" leaving it discretionary with the commissioners whether to put the classification into effect, "particularly its second use in connection with the making of the finding by the date specified."<sup>63</sup> If it is assumed that each board is left to its own discretion, "Can there . . . be

<sup>59</sup> TAX STUDY COMMISSION, REPORT 7-9 (1958).

<sup>60</sup> LEWIS, *op. cit. supra* note 5, at 34-35.

<sup>61</sup> N.C. Sess. Laws 1947, c. 1026, codified as N.C. GEN. STAT. § 105-294.1 (Supp. 1957).

<sup>62</sup> It may be noted that the title of the act read as follows: ". . . To Amend the Machinery Act for the Purpose of Classifying Certain Agricultural Products. . . ." *Ibid.*

<sup>63</sup> 25 N.C.L. REV. 464-65 (1947).

a classification of property within a single county which does not obtain elsewhere?"<sup>64</sup> This was an issue left open by the commentator and which must be left open here until some attention has been paid to the problems of state policy and delegation of legislative powers.

In 1955 the second of the two sections under scrutiny was enacted under the title, "Peanuts; year following year in which grown":

Peanuts shall be *taxed uniformly as a class* in the year following the year in which such peanuts are grown at not less than twenty per cent (20%) nor more than sixty per cent (60%) of the rate levied for all purposes upon real estate and other tangible personal property by or for said county and the city, town, or special district, if any, in which such peanuts are listed for taxation. The amount of the per cent of the tax rate to be applicable to such peanuts as herein provided shall be fixed each year for the succeeding year by the county board of commissioners not later than the time of the first September meeting of said board.<sup>65</sup> (Emphasis added.)

In this statute the legislature defines the class, and that class has no geographic limitations other than the boundaries of the state. The commissioners of a given county, unlike the situation in the first section discussed, are allowed no discretion with respect to classifying or adopting the legislative classification.

In neither statute can the exercise of discretion by the board of county commissioners affect the tax base either by exemption or by assessment. It can affect only the rates of tax imposed within the local taxing jurisdiction against a class of property—one which, under the first of these sections, it is assumed, is classified for local purposes by the commissioners, and which, under the second section, is classified for state-wide purposes by the legislature itself.

It is the first of these sections that raises the basic questions: Does the General Assembly have authority to provide for the local taxation of selected types of property at different levels of assessment and at different percentages of local rates in different taxing units? If so, may the legislature delegate the right to exercise that power to the local units? As a matter of policy, is the right to make such a delegation desirable?

If, with respect to a particular local taxing unit, the legislature itself defines a class of property and provides for its assessment or taxation for local purposes at levels different from other property in that unit, it is unlikely that the courts would find any violation of the uniformity rule, for there would be no lack of uniformity within the taxing jurisdiction and the class would have been defined by the General Assembly. In such a situation, for purposes of illustration, assume that the legislature

<sup>64</sup> *Ibid.*

<sup>65</sup> N.C. GEN. STAT. § 105-294.2 (Supp. 1957).

imposes a state-wide tax on all property to raise revenue for state purposes. With respect to this state levy all property in the state (other than classified intangibles) would fall in the same class. That being true, as applied to the property specially classified for the particular local taxing unit already referred to, the state tax would be uniform. Such also would be the case if the unit's classification had been made by local officials pursuant to a delegation of power from the General Assembly. (The propriety of such a delegation is discussed at a later point.) But what if there were no state-wide tax on property in general? The courts have not been asked whether the constitutional standard of uniformity is strong enough in such a situation to require state-wide uniformity in local assessment ratios and in percentages of local rates of taxation applicable to property in a given class regardless of the taxing unit in which located. For the Tax Study Commission appointed in 1957 the policy issue was whether the uniformity principle should be accorded that much strength.

If for present purposes it is assumed that the General Assembly is free to delegate the power to classify, and that local exercise of the power will be upheld so long as no state tax on property is involved, the field is open for competition among counties. A given county may classify in order to put itself in a better position to retain or secure a given class of property or property-owner. Other counties will soon feel they must meet the challenge and "under tax" the first county. Examples of this sort of competition are already in evidence.<sup>66</sup> Should the constitutional statement of the uniformity standard be spelled out to clarify the state's policy?

#### EXCLUSIONS FROM TAXATION

If the rule of uniformity is applicable simply within individual local taxing units rather than state-wide, and if the only restraint on the legislature's classification power is the mild judicial admonition for defining classes, skilled draftsmen would have little difficulty in producing legislation offering the widest variety of assessment and rate patterns among the counties and municipalities. Nor would they have difficulty in reducing the tax base throughout the state or in any given local jurisdiction.<sup>67</sup>

But, as already observed, the uniformity and classification principles do not stand alone. From its adoption, the present North Carolina

<sup>66</sup> N.C. Sess. Laws 1949, cc. 634, 1106; N.C. Sess. Laws 1951, c. 633; N.C. Sess. Laws 1955, c. 192.

<sup>67</sup> Four methods would be available: (1) Devise rules for the assessment of a given class or set of classes calculated to insure that little or no taxable value is obtained. (2) Fix rates so low for a given class or classes as to effect practical exemption. (3) Grant specific exemption. (4) List and define the classes of property to be taxed, thereby securing automatic exemption for classes not included in the list.

Constitution has fixed stringent limitations on the General Assembly's power to grant exemptions from taxation; these limitations are as old as the uniformity rule, and they were left intact when the classification power was adopted.<sup>68</sup> In plain language the constitution enumerates the specific categories of property the General Assembly is permitted to exempt.<sup>69</sup> In a property tax case, would the North Carolina Supreme Court be willing to say—as it did in a sales tax case—“The power to classify *ex necessitate* carries with it the discretion to select the subjects of taxation and to grant exemptions”?<sup>70</sup> Or would the court observe that the constitution said nothing about sales taxes, much less about the legislature's power to exclude and exempt from such a tax, while the constitution has always had something to say about the legislature's power to exempt from the property tax?

So long as the North Carolina Constitution required the imposition of a general property tax it was correct to say that all property (except that owned by the state and municipal corporations) was subjected to the tax unless, in the exercise of a limited constitutional exemption power, the General Assembly granted exemption. Thus, until 1936 the North Carolina law was embodied in the maxim, “Taxation is the rule, exemption the exception.”

But adoption of the classification amendment in 1936 worked a change in North Carolina's constitutional theory. The general property tax mandate was replaced by a grant of power to the legislature to establish a *classified* property tax. This pronounced change in theory is disclosed by the constitution's amended language; the economic and political circumstances attendant upon the amendment's adoption support the construction.<sup>71</sup>

Whether or not it was the primary motive for North Carolina's 1936 change, it is a recognized attribute of a classified property tax that the legislature is left free to select the classes to be taxed.<sup>72</sup> In selecting some classes for taxation it may elect not to select others; the power to

<sup>68</sup> See discussion of exemptions *supra*, page 118.

<sup>69</sup> N.C. CONST. art. 5, § 5 (1935), quoted *supra* note 3.

<sup>70</sup> Leonard v. Maxwell, 216 N.C. 89, 96, 3 S.E.2d 316, 322 (1939).

<sup>71</sup> When the “classification amendment” was adopted the legislature was concerned with bolstering local property tax revenues, not with the theoretical issue of whether its new right to classify included the right to exclude. The Classification Amendment Commission named in 1937 directed its attention to three issues: (1) exemptions under the \$1,000 homestead amendment adopted in 1936; (2) the classification of forest lands; and (3) the classification of intangibles. In making its report in 1938 the Commission made plain its belief that “before the General Assembly of this state attempts to use its classification power for any purpose not connected with these three,” it should “call upon some state agency, temporary or permanent, for preliminary study of the proposals.” NORTH CAROLINA CLASSIFICATION AMENDMENT COMMISSION, REPORT 11 (1938). And this has never been done. Once the General Assembly took care of the pressing problem of intangible property taxation, it tended to drop consideration of further use of its classification power.

<sup>72</sup> LELAND, *op. cit.* *supra* note 8, at 404-05.

choose implies the power to exclude. In economic fact, apart from legal or language distinctions, failure to tax is equivalent to exemption from taxation.

Accepted canons for construing constitutional provisions require that the entire document—all of its sections—be read as if written and adopted at one time to achieve a unitary plan and purpose. And this applies to amended sections as well as to those incorporated in the original instrument. Each provision or section is to be given meaning and treated as if it had full life and vigor, those unchanged as well as those amended. But if there is an irreconcilable inconsistency between an amended provision and one left unchanged the courts will hold that the amended section, as the latest expression of the people's will, should control.<sup>73</sup>

Thus, an attempt should be made to construe the exemption and classification sections of North Carolina's constitution to give full effect to both. If possible the classification section should not be held to emasculate the exemption section, and certainly the exemption section should not be interpreted so as to shackle the legislature's use of its classification power.

In a given example the legislature might fail to select a certain type of property for taxation and, by virtue of that exclusion, effect its exemption. Should the excluded property not fall into one of the types which the exemption section of the constitution permits the General Assembly to exempt, the constitutional question will arise. To hold that the exemption section controls the legislature's selection of property for exclusion from the tax base would be equivalent to saying that the following mandate—removed from the constitution by amendment in 1936—was eliminated in letter but not in spirit: "Laws shall be passed taxing, by a uniform rule . . . all real and personal property. . . ."<sup>74</sup> Such an interpretation would limit the legislature's classification power to the right to divide the general mass of property into groups or types—classes—permitting different rates of taxation and methods of assessment within the classes thus defined. Nevertheless, all property, though divided into classes, would remain taxable unless the exemption section of the constitution granted or permitted its exemption.

Admitting that this interpretation has the effect of harmonizing the two constitutional sections, it plainly subordinates the classification section to the exemption section and places strict limits on a primary purpose of classification—that is, recognition that the taxing power is one for legislative discretion, especially in the selection of subjects for taxation. Ordinarily, as already suggested, if, as here, two provisions of a constitution cannot both be given complete and independent effect the one

<sup>73</sup> See generally 11 AM. JUR., *Constitutional Law* §§ 53 to 55 (1957).

<sup>74</sup> N.C. CONST. art. 5, § 3 (1924).

reflecting the most recent expression of the people's will should be held to control. Thus, on balance, the stronger argument would hold that the legislature has authority to exclude property from taxation in its discretion, but that once a class has been selected for taxation (*i.e.*, included in the tax base) the exemption section operates to exempt items in that class owned by the state or municipal corporations and to limit the General Assembly's power to exempt items in the taxed class to those allowed by the exemption section.

#### DELEGATION OF POWERS TO EXEMPT AND TO CLASSIFY

Unless inhibited by the constitutional principle of uniformity, there seems to be no reason why the General Assembly cannot exercise its classification and exemption powers by special or local act as well as by general law.<sup>75</sup> As already indicated, it is also likely that, in addition to its authority to grant exemption to property held for specified purposes and in specified amounts, the courts would permit the General Assembly to exercise its classification power in such a way as to exclude from taxation any class of property it fails to tax. If the legislature has these plenary powers and if it is free to exercise its powers by both general and special laws, to what extent may it delegate the right to exercise its exemption and classification powers to local units of government? For example, rather than grant an exemption directly, may the General Assembly delegate to a board of county commissioners authority to exempt from taxation any property which the General Assembly itself has constitutional authority to exempt? May it delegate to a board of county commissioners authority to classify property for the purpose of setting assessment ratios or rates of taxation for selected classes different from those used for other classes? Or may the General Assembly delegate to a board of county commissioners authority to exercise the classification power in such a way as to reduce the local tax base through discretionary exclusions?

In raising these questions it is understood that the taxing power is a legislative power and that the power to classify and the power to exempt are merely incidental, although important, segments of the power to tax. It should also be understood that these issues cannot be settled without first considering the extent of the General Assembly's general authority to delegate the exercise of legislative power.

In North Carolina the legislative, executive, and judicial powers of government are separate and distinct.<sup>76</sup> All legislative power is vested

<sup>75</sup> There seems to be no provision in the North Carolina Constitution limiting the legislature's power to pass local and special acts with respect to tax matters other than collection. See N.C. CONST. art. 2, §29 (1915). For a general consideration of the problem, see *Report of the Commission on Public-Local and Private Legislation*, POPULAR GOVERNMENT, February-March, 1949.

<sup>76</sup> N.C. CONST. art. 1, § 8 (1868).



in the General Assembly.<sup>77</sup> It is commonly understood that delegation of legislative power is frowned upon by the courts,<sup>78</sup> but certain exceptions to the rule have been generally recognized. A recent North Carolina case states one of these exceptions as follows: "Since legislation must often be adapted to complex conditions involving numerous details with which the legislature cannot deal directly, the constitutional inhibition against delegating legislative authority does not deny to the legislature the necessary flexibility of enabling it to lay down policies and establish standards, *while leaving to designated governmental agencies and administrative boards the determination of facts to which the policy as declared by the legislature shall apply.* . . ."<sup>79</sup> (Emphasis added.)

In this case it was made plain, however, that the Supreme Court was unwilling to countenance delegation of legislative functions to a purely *administrative* agency of the state if those functions were of something more than a fact-finding nature.<sup>80</sup> Would the court consider a county, city, special district, or similar unit as something more than an administrative agency? This leads to an examination of a second exception to the general rule against delegation of legislative power,<sup>81</sup> stated by the North Carolina Supreme Court in the following terms: "Legislative power vests exclusively in the General Assembly . . . and, except as authorized by the Constitution, *as in the case of municipal corporations*, may not be delegated."<sup>82</sup> (Emphasis added.)

If the courts will recognize the General Assembly's right to delegate certain legislative functions to municipal corporations it is apparent that the term "municipal corporations" must be defined. Admittedly it includes cities and towns. The clearest statement of the way the term is used in the North Carolina Constitution was that given by the Supreme Court in 1906. In the case up for decision the plaintiff claimed that an act of the legislature setting up a local school district and conferring upon its governing board the power to tax was invalid as an unconstitutional delegation of legislative authority. In rejecting this contention Mr. Justice Hoke wrote:

It is true that the power of taxation is an inherent and essential attribute of sovereignty, which, under our system of government,

<sup>77</sup> *Id.* art. 2, § 1 (1868).

<sup>78</sup> *Provision Company v. Daves*, 190 N.C. 7, 128 S.E. 593 (1925).

<sup>79</sup> *Coastal Highway v. Turnpike Authority*, 237 N.C. 52, 60-61, 74 S.E.2d 310, 316 (1953).

<sup>80</sup> " . . . [W]hile the legislature may delegate the power to find facts or determine the existence or nonexistence of a factual situation or condition on which the operation of a law is made to depend . . . it cannot vest in a subordinate agency the power to apply or withhold the application of the law in its absolute or unguided discretion." *Id.* at 60-61, 63, 74 S.E.2d at 316, 318.

<sup>81</sup> The exception as commonly recognized is stated in 11 AM. JUR., *Constitutional Law* § 224 (1957).

<sup>82</sup> *Taylor v. Racing Ass'n*, 241 N.C. 80, 95, 84 S.E.2d 390, 401 (1954).

is placed in the legislative department, and that Mr. Cooley and other writers on the subject, in referring to it, say that it cannot be delegated except to municipal corporations. But in using the term "municipal corporations" in this connection these writers do not use the word in its restricted sense of municipal corporations proper, confining it to cities and towns, but in a more enlarged and generally received acceptation, which includes municipal corporations technically so termed, and also public corporations created by the State for the purposes of exercising defined and limited governmental functions in certain designated portions of the State's territory.

These last are termed by authors of approved excellence and decisions of authority to be public *quasi* corporations, and are said to include counties, townships, school districts, and the like.<sup>83</sup>

In other words, the Supreme Court showed a willingness to recognize a school district as enough of a municipal corporation to permit it to levy its own taxes through action of its governing board. Counties, school districts, and similar units exercise "defined and limited governmental functions in certain designated portions of the State's territory," including the power to levy taxes for carrying out governmental responsibilities within those local areas which are, in actuality, ultimate responsibilities of the state itself.<sup>84</sup> Thus, the decisions suggest it is proper to equate counties and special taxing districts with cities and towns as "municipal corporations" in the constitutional sense, and, as such, they are capable of receiving and exercising delegated legislative powers of taxation. In this connection, it may be reiterated that exemption and classification are elements of the taxing power.

Thus, other constitutional principles aside—especially the uniformity requirement—there appears to be no objection to legislation delegating to the governing body of any political subdivision of the state authority:

1. To exempt from taxation any property the General Assembly itself has authority to exempt.
2. To classify property for purposes of
  - a. Assessing it at a ratio lower than that used for other property in the taxing unit.

<sup>83</sup> *Smith v. School Trustees*, 141 N.C. 143, 149-50, 53 S.E. 524, 526 (1906). To the same effect, see *Wells v. Housing Authority*, 213 N.C. 744, 750, 197 S.E. 693, 697 (1938), and *Coastal Highway v. Turnpike Authority*, 237 N.C. 52, 64, 74 S.E.2d 310, 319 (1953). These cases do not conflict with the theory of the nature of counties expressed in *Jones v. Commissioners*, 137 N.C. 579, 596, 50 S.E. 291, 297 (1905), *Harrington & Co. v. Renner*, 236 N.C. 321, 326, 72 S.E.2d 838, 841 (1952), and *Martin v. Commissioners of Wake*, 208 N.C. 354, 365, 180 S.E. 777, 783 (1935).

<sup>84</sup> "The weight of authority is to the effect that all the powers and functions of a county bear reference to the general policy of the state, and are in fact an integral portion of the general administration of state policy." *O'Berry v. Mecklenburg County*, 198 N.C. 357, 360, 151 S.E. 880, 882 (1930), quoted with approval in *Martin v. Commissioners of Wake*, 208 N.C. 354, 365, 180 S.E. 777, 783 (1935).

- b. Taxing it at a rate different from that imposed on other property in the taxing unit.
3. To exercise the classification power in such a way as to exclude classes of property from taxation at will.

Should the principle of uniformity enunciated by the constitution have strength enough to defeat this delegation?

#### STATE POLICY

It has been explained that the constitutional requirement of uniformity in taxing property does not negate the legislature's right to grant the exemptions enumerated in the constitution; that it does not prohibit classification of property so as to have it assessed at a ratio of market value different from that used in taxing other property; and that, if the classification power is properly used, the uniformity rule probably does not prohibit excluding from the tax base classes of property not exemptible under the constitution. But the contexts in which these explanations have been made have made it plain that such exercises of the taxing power will meet the constitutional test of uniformity only so long as they apply to designated classes of property *within the taxing unit* for which the classifications have been made.

So long as the General Assembly limits its use of these powers to a given taxing unit, or so long as a delegated exemption or classification power is to be exercised within a given county, city, town, or special district, the question of uniformity does not necessarily arise *if the individual unit is considered the taxing jurisdiction*. And as long as North Carolina imposes no state tax on property it may be considered academic to ask if it is proper for the legislature—directly or through delegation—to reduce or permit reduction of the tax base by these legitimate means in selected political subdivisions without reducing it state-wide.

But the question is more than academic, for "Constitutions are supposed to deal with future possibilities as well as present realities. . . ."<sup>85</sup> As was said in 1934 in connection with the proposed draft of a new constitution for North Carolina, "despite the present tendency to leave the property tax as a tax to be levied only by local governments, it cannot be said that the state has forever abandoned a property tax."<sup>86</sup> Furthermore, as already suggested, even in the absence of a state tax on property, there may be valid objections to property tax bases differing from unit to unit. Hence, it becomes important to define the policy of the state: Should the constitutional rule of uniformity apply only within subdivisions of the state, or should it apply to the state as a geographic and political unity?

<sup>85</sup> GARDNER, *op. cit.* *supra* note 46, at 54.

<sup>86</sup> *Ibid.*

It will be admitted at the outset that if the General Assembly should permit the base against which some future state property tax might be imposed to be reduced in some but not all geographic areas, any tax levied on such a mutilated base would be invalid. It would not apply uniformly to all the property in the class taxed.<sup>87</sup> Once that point has been made, however, the cases give little assistance. In the absence of judicial views it is pertinent, although not necessarily helpful or controlling, to consider any pattern disclosed by the acts of the General Assembly and any opinions the North Carolina Attorneys General may have expressed with respect to the issue.

### *The Statutory Pattern*

Rather than catalogue each expression of the General Assembly's views in this field, four statements will serve to summarize the attitude toward uniformity discernible in the statutes:

*Tax rates:* The General Assembly has authorized counties, cities, towns, and special districts to set their own tax rates. The constitution limits the rate to be levied by counties for general governmental expenses,<sup>88</sup> and the legislature has provided a ceiling on the rate to be levied by cities and towns for the same purpose.<sup>89</sup>

*Classification:* The legislature has used its power to classify property for the imposition of tax rates in only one major instance (by classifying certain intangibles), but in at least one case it seems to have delegated to counties the right to use that power.<sup>90</sup> The General Assembly has shown no inclination to exercise its classification power by setting assessment ratios or standards for selected types of property, nor has it used the power to exclude classes of property from the tax base unless its selection of certain intangibles for taxation by the state be so interpreted.<sup>91</sup>

<sup>87</sup> See 25 N.C.L. REV. 464-65 (1947).

<sup>88</sup> N.C. GEN. STAT. § 153-9, par. 2 (Supp. 1957) authorizes counties to levy for general purposes up to the 20¢ maximum set by N.C. CONST. art. 5, § 6 (1951).

<sup>89</sup> N.C. GEN. STAT. §§ 160-56, -402 (Supp. 1957) authorize cities and towns to levy up to \$1.50 on the \$100 of value of property for general governmental purposes.

<sup>90</sup> N.C. GEN. STAT. § 105-294.1 (Supp. 1957), "agricultural products in storage."

<sup>91</sup> Under the North Carolina Constitution the General Assembly has complete authority over the creation of counties, cities, and towns and over their rights to impose taxes. This constitutional scheme can be interpreted in two ways, either (1) that the state as a whole is the property tax jurisdiction, operating through local subdivisions, or (2) that the state, counties, and municipalities—under legislative action—are three separate and independent levels of government, each with its own taxing power and property tax base. If the first interpretation is accepted it can be said that the Machinery Act, taken in conjunction with the Intangibles Tax, provides for taxing all property not specifically exempted, some of it by the local units, some by the state. [This may be the significance of *Bragg Investment Co. v. Cumberland County*, 245 N.C. 492, 96 S.E.2d 341 (1956).] Looked at in this light, the General Assembly has, in practice, and with few exceptions, adhered to the theory of a general property tax. On the other hand, if the second view is accepted it can be argued that when the Intangibles Tax was enacted the General Assembly used its classification power to exclude the selected intangibles from the county and municipal tax bases and, at the same time, to exclude from the state tax base all other forms of property.

*Exemption:* Although the legislature has from time to time granted exemption to classes and items of property (both on a state-wide and local basis) not entitled to exemption under the constitution, it has not delegated exemption powers to local units of government.<sup>92</sup> It has reserved to itself the right to exempt property from taxation.

*Assessment:* The General Assembly has established uniform state-wide standards for use in assessing property for taxation<sup>93</sup> and has established a system requiring annual assessment of property other than real estate, while establishing a quadrennial system for real estate;<sup>94</sup> but it has granted both general and special legislative permission to individual counties to defer or postpone reassessment of real property beyond stated quadrennial years.<sup>95</sup> Responsibility for the work of assessing property for taxation has been divided by the General Assembly in three ways for administration at two levels of government:

1. To the State Board of Assessment (at the state level) the General Assembly has assigned responsibility for assessing the total property-worth of railroads and public service companies capable of exercising the power of eminent domain.<sup>96</sup> (This includes assessment of real property and both tangible and intangible personalty.) The unitary valuation is allocated among local units according to accepted formulae.<sup>97</sup> (Counties, cities, and special districts apply their tax rates to the net valuations thus allocated.)

2. To the Commissioner of Revenue, subject to review by the Tax Review Board upon proper appeal, the General Assembly has assigned responsibility for assessing intangibles classified under the intangibles tax.<sup>98</sup> (Uniform state-wide rates are imposed on such assessments, and the net revenues received therefrom, under supervision of the State Board of Assessment, are allocated among the political subdivisions of the state by statutory formulae.)<sup>99</sup>

3. To the counties, subject to supervision, review, and correction by the State Board of Assessment (upon appeal or upon its own motion), the General Assembly has assigned responsibility for assessing all real property and all tangible and intangible personalty not assessed by the Commissioner of Revenue or State Board of Assessment.<sup>100</sup> (To the

<sup>92</sup> LEWIS, *op. cit. supra* note 5, at 24-5.

<sup>93</sup> Real and tangible personal property in general, N.C. GEN. STAT. § 105-294 (Supp. 1957); public service companies and railroads, *Id.* §§ 105-358, -365, -366; classified intangibles, *Id.* §§ 105-199 to -205.

<sup>94</sup> N.C. GEN. STAT. §§ 105-278 to -280 (Supp. 1957).

<sup>95</sup> See provisos added to N.C. GEN. STAT. § 105-278 (Supp. 1957).

<sup>96</sup> N.C. GEN. STAT. § 105-362 (Supp. 1957).

<sup>97</sup> N.C. GEN. STAT. § 105-360 (Supp. 1957) (utilities), § 105-365, -366, -370 (Supp. 1957) (railroads).

<sup>98</sup> N.C. GEN. STAT. § 105-208 (Supp. 1957).

<sup>99</sup> N.C. GEN. STAT. § 105-213 (Supp. 1957).

<sup>100</sup> N.C. GEN. STAT. §§ 105-275, -276, -283 to -293, -327 to -334 (Supp. 1957).

value so determined, all local rates—county, city, town,<sup>101</sup> and special district—are applied. When the state imposed a tax on real and tangible personal property its rates were applied to valuations determined in the same manner.)

*Conclusions:* Reviewing this recital of the North Carolina property tax statutory pattern certain factual conclusions emerge:

1. The General Assembly has shown no disposition to delegate the power to exempt property from taxation, but in a number of instances it has assumed authority to grant exemptions on a less than state-wide basis, thereby suggesting that it assumes the constitution's uniformity rule does not prohibit variations in the tax base from locality to locality so long as uniformity is preserved within individual local taxing units.

2. The General Assembly has not felt that the uniformity rule prohibits it from allowing local governmental units as well as the state to set their own tax rates (within certain limits). Thus, there is no single tax-levying jurisdiction for property tax purposes in North Carolina; rather, the General Assembly has recognized four, each competent in its own area under legislative enactments: the state, the county, the city or town, and the special district.

3. The statutory pattern demonstrates that the General Assembly has acted as if the uniformity principle requires assessment of property for taxation to be administered on a uniform state-wide basis, presumably to avoid accidental or intentional geographic variations in the tax base. Thus, the statutes provide for only one assessment jurisdiction, and that is state-wide. This is true both from the standpoint of ultimate authority and from the standpoint of the statutory plan of administration; and it is true despite the fact that, through administrative convenience and financial necessity, the General Assembly has assigned to counties a large segment of the assessment work. The assessments placed on property by county authorities remain subject to review, revision, and equalization by an agency of state-wide jurisdiction.

4. The inference to be drawn from these facts is that, with the exception of certain acts granting local tax exemptions, the General Assembly has adhered to a state-wide concept of uniformity in matters concerned with the tax base, that is, with respect to the subjects of taxation and their assessment. Unless the local exemptions are treated as attempted classifications—and there is doubt they would be upheld on that basis since they seem to be based solely on geographic location—it can be said that the General Assembly has refrained from using the classification power to exclude property from the tax base on a less than

<sup>101</sup> Cities and towns situated in more than one county may assess their own property, and a few of the smaller ones do so. N.C. GEN. STAT. § 105-334 (Supp. 1957).

state-wide basis. Furthermore, while taking into account the practical effect of the two instances in which the legislature has allowed local units to apply less than their full unit-wide rates to defined classes of property,<sup>102</sup> there is still substantial evidence that with regard to assessment standards and ratios the General Assembly has been unwilling to sanction systems under which the tax base might be altered in one political subdivision without altering it state-wide. So much for the formal evidence of legislative "intent," but it is impossible to say whether this has been a reasoned interpretation of the constitutional principle of uniformity or simply an intuitive application of "fair play," the principle Chief Justice Stacy called "the main thesis of the Constitution."<sup>103</sup>

### *Views of the Attorneys General*

At the same general election at which the classification amendment was adopted the people approved an additional constitutional amendment designed to authorize the General Assembly, in its discretion, "to exempt from taxation not exceeding one thousand dollars (\$1,000.00) in value of property held and used as the place of residence of the owner."<sup>104</sup> In a practical as well as theoretical sense this amendment served to establish within the constitution itself a classification of property to which the General Assembly might accord exemption as it saw fit. The Classification Amendment Commission, considering this homestead amendment as well as the amendment named in its title, asked Attorney General McMullan certain questions, among which were these: "Would it be within the constitutional power of the General Assembly [under the homestead exemption amendment] to . . . (c) provide different levels of exemption in different counties? (d) leave the matter of exemption optional with individual taxing units, to be acted upon as financial conditions permit?"<sup>105</sup>

In other words, the Attorney General was asked whether, in his opinion, the General Assembly might exercise its discretionary homestead exemption power to reduce or permit the reduction of the tax base on less than a state-wide basis. In reply the Attorney General wrote:

It is doubtful whether the suggestions concerning different levels of exemption in different counties, whether by legislative act or by home rule, would meet the requirements of the Constitution that "taxes on property shall be uniform as to each class of property taxed." It strikes me that *the class of property taxed*

<sup>102</sup> N.C. GEN. STAT. §§ 105-294.1, -294.2 (Supp. 1957).

<sup>103</sup> *Odd Fellows v. Swain*, 217 N.C. 632, 637, 9 S.E.2d 365, 368 (1940).

<sup>104</sup> N.C. CONST. art. 5, § 5 (1935).

<sup>105</sup> Undated letter of the Attorney General of North Carolina to Henry Brandis, printed as Appendix D, NORTH CAROLINA CLASSIFICATION AMENDMENT COMMISSION, REPORT 326, 332 (1938).

is *homesteads*, and not homesteads in Wake County or any other county.<sup>106</sup> (Emphasis added.)

Here the Attorney General recognized that the classification had been established by the constitution itself, and in such a situation he felt the General Assembly, in using its own classification power, had no authority to make sub-classifications on a geographic or political subdivision basis. The opinion does not deal with the question of whether, in the absence of a *constitutional classification*, the General Assembly might exercise its classification power by establishing classes defined in terms of geographic or political subdivisions.

In August, 1956, when the first Tax Study Commission was considering the taxation of intangible personal property it asked Attorney General Rodman for his views on whether the General Assembly had power to authorize counties, cities, and towns to *exempt* residents of their communities from payment of the Intangibles Tax. In answer, the Attorney General referred to the fact that the tax was by its terms levied for the benefit of the state as well as for the political subdivisions of the state, and said, "I do not think that it would be in the power of the legislature to delegate to a local community the power to exempt residents of that community from the payment of a tax levied by the state on the residents of all other areas of the state."<sup>107</sup> He then added:

Aside from the question of the delegation of power to exempt from taxation, Article V, Section 5 of our Constitution limits the power of the legislature with respect to the exemption from property taxation. Our Supreme Court, in several cases, has said that the legislature can only exempt from taxation as authorized by Section 5. *Odd Fellows v. Swain*, 217 N.C. 632; *Hospital v. Guilford County*, 218 N.C. 677.

... When Sections 3 and 5 of Article V, of the Constitution are read together, a serious question is presented as to whether any kind of property may be freed of taxation when an ad valorem tax is levied on other property.<sup>108</sup>

The Attorney General's main point here seems to have been this: If a tax is being imposed by the state, the state itself deriving revenue from it, the constitutional rule of uniformity prevents the General Assembly from granting or delegating the right to grant exemptions or exclusions from that tax in terms of geographic or political subdivisions. He does not touch on the situation in which the state levies no tax of its own.

In September, 1956, Attorney General Patton was asked, "Does the General Assembly have the authority to enact statutes which permit

<sup>106</sup> *Id.* at 333.

<sup>107</sup> Letter of the Attorney General of North Carolina to Brandon P. Hodges, August 8, 1956, in the possession of the North Carolina State Department of Tax Research.

<sup>108</sup> *Ibid.*



local taxing authorities, in their discretion, to levy a tax upon intangible personal property or to exempt such property entirely from taxation?" To this the Attorney General replied in the negative, calling attention to the fact that, "The General Assembly has no authority to exempt property from taxation beyond the permissive power granted to it by Article V, Sec. 5, of the State Constitution," and stating that it was his opinion that this constitutional provision made it clear (1) "that total exemption of intangible personal property does not come within the authorization" and (2) that "the General Assembly may not authorize local taxing authorities, in their discretion, to exempt intangible personal property from taxation."<sup>109</sup>

To summarize: The first opinion from the Attorney General's office stands for the proposition that the General Assembly has no authority to exercise its power to grant exemptions on less than a state-wide basis either by direct legislation or by delegation to local authorities. In other words, Attorney General McMullan was of the opinion that the constitution does not permit the General Assembly to use its exemption power to effect variations in the property tax base from local unit to local unit.

The third opinion stands for the proposition that the constitutional enumeration of permissible legislative exemptions is exclusive, and the second opinion holds simply that local units of government cannot be permitted, under the uniformity standard, to exempt their citizens from a state-imposed property tax.

<sup>109</sup> Letter of the Attorney General of North Carolina to Brandon P. Hodges, September 12, 1956, in the possession of the North Carolina State Department of Tax Research. In support of his views the Attorney General cited two cases: (1) *Odd Fellows v. Swain*, 217 N.C. 632, 9 S.E.2d 365 (1940), holding that a commercial office building owned by a fraternal order was taxable despite the fact that the lodge rooms occupied a small portion of the building. The opinion contains language that is helpful in interpreting the exemption section of the constitution: "The grant is limited in its terms, and the power to exempt stops at the boundary of the grant." *Id.* at 638, 9 S.E.2d at 369. (2) *Rockingham County v. Elon College*, 219 N.C. 342, 13 S.E.2d 618 (1941), holding that the General Assembly has no authority to grant exemption to commercial real property regardless of whether the net income therefrom is used exclusively for educational purposes. In this case the Supreme Court called attention to the fact that the authority granted in the exemption section of the constitution, "is not that the General Assembly may exempt property *held by* educational, scientific, literary, charitable, or religious institutions, but the grant is in respect of property *held for* one or more of the designated purposes. . . . It is the use of property other than in private competitive business that justifies its exemption from taxation. . . . It is difficult for the owners of other rental properties to understand why their buildings should be taxed and the office building of their neighbor granted an exemption. The Constitution declares that those in the same class shall be treated alike. . . . The fact that a commercial enterprise devotes its entire profits to a charitable or laudable purpose does not change the character of its business nor the purpose for which it is held. It is still a commercial enterprise, and is held as such. . . . So, when an educational institution sees fit to engage in an outside competitive business for the purpose of increasing its revenues, the trade part of its business falls into the category of a commercial undertaking." *Id.* at 346-47, 13 S.E.2d at 621.

If it were permissible to draw inferences from the three opinions it could be said that the three Attorneys General were inclined to take a strict view of the exemption and uniformity provisions of the constitution and, had they been asked directly whether the legislature's power to classify property carried with it the power to effect variations in the property tax base on less than a state-wide basis, that they would have answered in the negative. But the questions they considered were not framed in terms of classification; they were framed in terms of exemption. And although Attorney General Rodman came close to dealing with the point, none of the opinions can be considered as a direct expression of views on the basic issue under discussion here.

#### CONCLUSION

The Attorneys General have not actually been called on to deal with the question of whether the uniformity principle would prevent less than state-wide alteration of the tax base through use of the classification power. Furthermore, while it is true that statutes are persuasive in showing a legislative attitude or "intent" to deal with the property tax base in state-wide terms, it must be admitted that the General Assembly has not been entirely consistent in dealing with the problem, either by exemption or classification. In addition, it can hardly be presumed that members of the General Assembly have been unaware of the fact that informally adopted assessment ratios have long worked to produce an admittedly disuniform tax base from taxing jurisdiction to taxing jurisdiction within the state.

What this recital seems to mean is that there is more than a chance that the Supreme Court would find it difficult to invoke the uniformity rule on a state-wide basis in the absence of a state-wide property tax. Hence, it must be recognized as being within the realm of legal possibility that the General Assembly may be able to exercise or delegate the exercise of its *classification* power—and possibly even its exemption power—so as to reduce the tax base on a less than state-wide basis. If such a conclusion should be reached by the Supreme Court certain results would naturally follow:

1. Counties and possibly cities and towns would be free to compete in granting tax concessions through rate and assessment differentials as well as through exclusions and exemptions.

2. Individuals and business firms owning property in more than one taxing jurisdiction would be forced to determine on a unit-by-unit basis what property was exempt, excluded from the base, or taxed or assessed at a reduced rate.

3. In making distribution of state funds to local units for services financed jointly by the state and local governments it would be futile

for the distributing agency to try to determine wealth, ability to pay, or need on the basis of local assessment figures.

4. Should the state find it necessary to impose a state-wide tax on locally assessed real and personal property great complications and expense would be incurred in establishing a uniform base against which to apply the tax.

In this state of the law, North Carolina should consider writing into its constitution provisions prohibiting the General Assembly from reducing the property tax base on a less than state-wide basis, either directly or by delegation. It was this objective that led the Commission for the Study of the Revenue Structure of the State to propose the following working drafts for amendments to the North Carolina Constitution:<sup>110</sup>

#### ARTICLE V, SECTION 3. "STATE TAXATION."

##### *Present wording:*

The power of taxation shall be exercised in a just and equitable manner, and shall never be surrendered, suspended or contracted away. Taxes on property shall be uniform as to each class of property taxed. Taxes shall be levied only for public purposes. . . .

##### *Proposed wording:*

The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away. Only the General Assembly shall have power to classify property and other subjects for taxation, which power shall be exercised only on a state-wide basis. No class or subject shall be taxed except by uniform rule, and every classification shall be uniformly applicable in every county, municipality, and other local taxing unit of the State. The General Assembly's power to classify shall not be delegated, except that the General Assembly may permit the governing boards of cities and towns to classify trades and professions for municipal license tax purposes. . . .

#### ARTICLE V, SECTION 5. "PROPERTY EXEMPT FROM TAXATION."

##### *Present wording:*

Property belonging to the State or to municipal corporations, shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries, and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars. The General Assembly may exempt from taxation not exceeding one thousand dollars (\$1,000) in value of property held and used as the place of residence of the owner.

<sup>110</sup> TAX STUDY COMMISSION OF THE STATE OF NORTH CAROLINA, REPORT 37 (1958).

*Proposed wording:*

Property belonging to the State, counties, and municipal corporations, shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes, and, to a value not exceeding three hundred dollars, any personal property. The General Assembly may exempt from taxation not exceeding one thousand dollars in value of property held and used as the place of residence of the owner. Every exemption shall be on a state-wide basis and shall be uniformly applicable in every county, municipality, and other local taxing unit of the State. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this section.