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gather that the clear intent of the legislature was to permit crediting of less than the total of a member's prior service.

It is my opinion that prior service to be credited can be less than the actual amount of prior service rendered, provided each member is credited with said prior service in accordance with the rules and regulations of the municipal employees' retirement board.

FRANK J. KELLEY,
Attorney General.

TAXATION:
PROPERTY EXEMPTION:
VETERAN'S HOMESTEAD EXEMPTION:

In ascertaining the eligibility of a veteran for homestead exemption, the value of the taxable property to the amount of $7,500 is determined by the supervisor or assessing officer as changed, if at all, by the local board of review and by county equalization. State equalization is not applicable and is to be ignored.

No. 4107

October 29, 1962.

(See modification by opinion No. 4107-A, page 644)

Honorable Frank D. Beadle
State Senator
150 Brown Street
St. Clair, Michigan

You have made the following request for an opinion of the Attorney General:

> "In connection with the provisions of the General Property Tax Act establishing a veterans' homestead exemption, a claimant is not eligible for such exemption if he is the owner of taxable property of greater value than $7,500.00.
>
> "Your opinion is requested as to whether, in determining the total value of taxable property owned, assessed value as determined by the supervisor or assessing officer should be used, or the valuation as finally determined through the process of equalization."

Act 206 P.A. 1893, as amended, is known as the General Property Tax Act.[1] Section 1 of that act reads:

> "The People of the State of Michigan enact, That all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."

Section 7 grants the real estate exemptions by providing "The following property shall be exempt from taxation." Subdivision Eleventh of Section 7 spells out the homestead exemptions for any soldier or sailor of the federal

[1] C.L. 1948 § 211.1 et seq.; M.S.A. 1960 Rev. Vol. § 7.1 et seq.

government who was discharged under honorable conditions. All real estate to the value of $2,000 used and owned as a homestead by any such veteran is exempt from taxation if the veteran is otherwise eligible.

Paragraph (i) of Subdivision Eleventh reads as follows:

> "(i) If any homestead as defined in this eleventh subdivision shall exceed in value the sum of $2,000.00, it shall be exempt only to the amount of such sum.
>
> "The exemptions set forth in this eleventh subdivision shall not operate to relieve from taxation any person who is the owner of taxable property, both real and personal, of greater value than $7,500.00. For any year previous to 1945 such exemption shall not operate to relieve from taxation any person who was the owner of taxable property, both real and personal, of greater value than $5,000.00 for such year."

By amendatory Act No. 24, Public Acts 1946, Extra Session, the legislature in rewriting Section 7 of the General Property Tax Act, added a Paragraph (j) in the Eleventh Subdivision relating to the interpretation and construction of words. The following definition appears there:

> "The term 'to the value of' as used in this eleventh subdivision shall be construed to mean the assessed valuation as determined by the supervisor or assessing officer as changed, endorsed or certified by the local board of review, or state tax commission on appeal."

Before proceeding to a discussion of the foregoing statutes and the relevant court decisions as they apply to your request, it is important to point out that Section 7 of the General Property Tax Act does not impose a tax but instead grants exemptions from taxation. The significance of the distinction between the imposition of a tax and the granting of an exemption was well stated by our Supreme Court in the early case of *The People ex rel. St. Mary's Falls Ship Canal Co. v. Auditor-General* (1859), 7 Mich. 84, which involved an act of the legislature authorizing the commissioners for the construction of the St. Mary's Falls ship canal to stipulate on behalf of the State in the contract for construction, that any taxes assessed on lands donated for the purpose should be remitted to the contractors for a period of five years. Speaking of the validity of the remitted tax provision, the Court said:

> "I do not regard this remission of the taxes as a violation of that provision of article xiv of the constitution which requires the legislature to provide a uniform rule of taxation, except on property paying specific taxes. This provision of the constitution has no reference to the power to exempt, or to remit taxes; which is, and necessarily must be, to a great extent, left to the discretion of the legislature. Its design was to secure, to every portion of the state, and to every class of property taxes, a uniform rate—to secure equality, so that property in one quarter should not be taxed at a higher rate than in another, or the same kind taxed unequally. The legislature has the power of prescribing the subjects of taxation, and of exemption, but it can not arbitrarily tax property according to locality, kind, or quality, without regard to value (citation), but in this respect it must act by uniform

rules. But to exempt property, as is done in the case of church, school, or library property, or to remit taxes for any cause, has nothing to do with the uniformity of the rule of taxation."
(pp. 89, 90)

In the subsequent case of *Board of Supervisors of Chippewa County v. Auditor General* (1887), 65 Mich. 408, the Court announced that the power of the legislature to exempt lands from taxation was no longer an open question in this State; its validity had been settled by the decision in the *St. Mary's Falls Ship Canal case,* supra. The rule was again recognized in *United States Cold Storage Corporation v. Detroit Board of Assessors* (1957), 349 Mich. 81.

Turning now to the pertinent exemption statutes themselves, it is to be noted that the grant of the exemption is in this language "All real estate to the value of $2,000.00 used and owned as a homestead * * *." The limitation in paragraph (i) fixing "value" is worded slightly differently, it there appearing "* * * who is the owner of taxable property, both real and personal, of greater value than $7,500.00." These differences in phraseology were present in the eleventh subdivision of Section 7 (see Act 76 P.A. 1945) at the time the legislature enacted the definition of the term "to the value of" by Act 24 P.A. 1946, Extra Session. Although the words "to the value of" appear before the figure "$2,000.00" and are not used in relation to the $7,500 sum, nothing has been found in the history of these enactments to indicate a legislative intent that the values should be calculated or determined by diverse methods. In fact, such a result could hardly have been contemplated since the value, if any, of the homestead itself over and above the $2,000 must be used in determining whether or not the value of the taxable property, both real and personal, owned by the taxpayer is greater than $7,500. Therefore, for purposes of this opinion, the term "to the value of" as defined by the legislature will be considered as being equally applicable in the determination of the $2,000 exemption and the $7,500 limitation.

Your request asks whether the $7,500 sum is to be determined by the use of the assessed value fixed by the supervisor or assessing officer or by use of the valuation as finally established through the process of equalization. To decide which of these alternative valuations should be applied, it is appropriate to review the steps by which they are ascertained.

To determine the value of taxable property as fixed by the supervisor or an assessing officer, we start with the initial function of assessment. Section 7 of Article X of the State Constitution prescribes:

> "All assessments hereafter authorized shall be on property at its cash value."

Correspondingly, Section 24 of the General Property Tax Act requires the supervisor or assessor to estimate, according to his best information and judgment, the true cash value of every parcel of real property within his assessing unit. He enters the amount so ascertained upon the assessment roll. Section 27 defines "cash value" as used in the act to mean "* * * the usual selling price at the place where the property to which the term (cash value) is applied shall be at the time of assessment, being the price

which could be obtained therefor at private sale, and not at forced or auction sale." After the assessment roll has been prepared by the supervisor or assessing officer, it becomes subject to review by the local board of review. Two basic functions are performed in the review process; 1. the board of review is expected to review the entire property tax roll to correct errors and detect omissions and inequities, and 2. hear and consider the appeals of individual taxpayers. In one sense, the local board of review engages in equalizing and assessing functions to insure uniformity at true cash value within the taxing district.

The final step, except for proceedings in a court, is before the State Tax Commission which has jurisdiction under Section 152 of the General Property Tax Act over the assessment rolls for the correction of omissions and irregularities and jurisdiction to correct individual property assessments on appeal.

From the foregoing analysis it is clear that the determination of the "cash value" of taxable property owned by an individual is or may be subject to 1. the initial assessment by the supervisor or assessing officer, 2. adjustment by the local board of review, and 3. revision by the State Tax Commission on appeal.

Under the process of equalization, it may be broadly stated that taxable property is subject to two types of equalization, namely, county equalization and state equalization. County equalization is carried out by the board of supervisors sitting as a county board of equalization which derives its powers and responsibilities from Section 34 of the General Property Tax Act. By that section the county board of equalization is required to examine the assessment rolls of the several townships, wards or cities, and ascertain whether the real and personal property in the respective townships, wards or cities has been equally and uniformly assessed at true cash value. If the board finds the assessment levels in any of these assessing units to be relatively unequal, then the board shall deduct from or add to the taxable value of all property in the assessing unit such an amount as in its judgment will produce a sum which represents the true cash value thereof. This process affects only the aggregate valuation of taxable property within an asserting unit and achieves nothing in the matter of reducing inequalities in assessments among properties or taxpayers within assessment districts. By Section 34, any supervisor of any township or city or the county board of education or the board of education of an incorporated city or village aggrieved by the action of the county board of equalization may appeal to the State Tax Commission.

State equalization is performed by the State Board of Equalization created by Act No. 44, P.A. 1911 pursuant to the mandate of Section 8 of Article X of the State Constitution. The State Board of Equalization equalizes the assessed valuations of the taxable property of whole counties in relation to each other. State equalization does not specifically equalize between the assessing units within a county nor between individual assessments. The assessed value of particular parcels of property is not affected by action of either the county boards of equalization or the State Board of Equalization except to the extent that any increase or decrease of the aggregate assessed

valuations is spread evenly over the individual assessments within the aggregate.

We now examine your question against the foregoing background. In 1944 the Supreme Court decided the case of *St. Ignace City Treasurer v. Mackinac County Treasurer,* 310 Mich. 108. In that case the plaintiff contended that the term "assessed valuation" as used in the 16-mill amendment (Const. 1908, Art. X, § 21) meant the assessed valuation as fixed by the local assessor and the city board of review but the Supreme Court concluded that such action amounted to a tentative assessment only and did not become final until equalized by the county board of supervisors and, following an appeal, by the State Tax Commission. No action by the State Board of Equalization was involved. Following the decision in this case the Attorney General issued a number of opinions in 1945 construing and applying the Court's holding.[2] From an examination of these opinions it is clear that the Attorney General understood the decision of the Supreme Court in the *St. Ignace* case to adjudicate that the term "assessed valuation" as used in the 15-mill amendment meant the local assessment as approved or changed and corrected through the statutory process of county and state equalization. But the state equalization, under discussion at that time, was the equalization by the State Tax Commission and if a change was made by the Commission from the equalization set by the county board it was still a revision of county equalization. Prior to the decision in the *St. Ignace* case, the practice had been that equalization by the county board was made only for the purpose of determining the proper share of the county levy to be borne by each taxing unit in the county. After the decision, it was recognized that the equalized value of these governmental units within the county became the "assessed valuation."

Under the foregoing conditions the legislature adopted Act No. 24, P.A. 1946, Extra Session, in which the term "to the value of" as used in the eleventh subdivision was defined to mean "the assessed valuation as determined by the supervisor or assessing officer as changed, endorsed or certified by the local board of review, or state tax commission on appeal." There can be little doubt of the legislative intent. The legislative definition falls squarely within the definition of the Supreme Court in the *St. Ignace* case.

It is well to point out that the decision of our Supreme Court in the *Pittsfield* case[3] was handed down on November 29, 1954. That case held that the term "assessed valuation" of property subject to taxation, as used in the 15-mill amendment, means the value as finally fixed and determined by the State Board of Equalization. It is my opinion that the decision of the Supreme Court in the *Pittsfield* case neither adds to nor detracts from the statutory definition of the term "to the value of" appearing in amended Section 7 of the General Property Tax Act. Consequently, as the definition of that term now stands upon the statute books, state equalization as effectuated by the State Board of Equalization has no application in the determination of the "assessed valuation" of the taxable property of a veteran in

[2] See O.A.G. 1945-46, pp. 187, 323, 375, 376.

[3] *School District No. 9, Pittsfield Township, Washtenaw County v. Washtenaw County Board of Supervisors,* 341 Mich. 388.

establishing his right to a homestead exemption. My conclusion in this regard is substantiated by legislative action in 1959. In the regular legislative session of that year you and Senator Smeekens were co-authors of Senate Bill No. 1057 which as introduced proposed an amendment to the definition of the term "to the value of" so that as amended it would read:

> "The term 'to the value of' as used in this eleventh subdivision shall be construed to mean the valuation as fixed by the state board of equalization."

Senate Bill No. 1057 was referred to the Committee on Taxation (Senate Journal 1959, p. 127). It was reported favorably by that Committee with an amendment and as so amended the provisions here under consideration read:

> "The term 'to the value of' as used in this eleventh subdivision shall be construed to mean the valuation as fixed by the state board of equalization and applied to the property upon which exemption is claimed."
>
> (Senate Journal 1959, p. 1508)

Senate Bill No. 1057 as amended by the Committee on Taxation was reported favorably by the Committee of the Whole. The Senate agreed to the amendments and the bill was placed on third reading (Senate Journal 1959, p. 1554). The bill failed of passage in the Senate but upon reconsideration was passed (Senate Journal 1959, pp. 1555, 1563, 1577). Upon being received by the House, Senate Bill No. 1057 was referred to the Committee on General Taxation (House Journal 1959, p. 2071). The bill was reported out favorably by the Committee on General Taxation without amendment to the provision here under consideration (House Journal 1959, p. 2121). It received favorable consideration in the Committee of the Whole (House Journal 1959, p. 2135) but was defeated on the question of passage (House Journal 1959, p. 2185).

I answer your question by saying that in my opinion the total value of taxable property owned by a veteran is to be fixed by use of the assessed valuation as determined by the supervisor or assessing officer as changed, if at all, by the local board of review and by county equalization. In fixing such total value of taxable property, state equalization as carried out by the State Board of Equalization is to be ignored.

FRANK J. KELLEY,
Attorney General.