Therefore, it is my opinion that another agency within the state may engage in the accreditation of the Michigan public schools without the explicit designation to do so by the State Board of Education.

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TAXATION: COUNTY EQUALIZATION: No. 152, P.A. 1970, which amends § 34(1) of the general property tax act, as amended, to provide for separate equalization of real property and personal property and to provide for the use of separate equalization factors of same on tax rolls and statements, is constitutional. It is not in conflict with any other section of the general property tax act.

No. 4719 May 6, 1971.

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You have asked the following questions:

1. Is No. 152, P.A. 1970, constitutional?

2. If the act is constitutional, does it, nevertheless, conflict with other sections of the general property tax act?[1]

Number 152, P.A. 1970, amends § 34 of the general property tax act,[2] which deals with county equalization and appellate review of county equalization by the State Tax Commission. In pertinent part, the amendatory language reads:

> "* * * Notwithstanding any other provisions of this act, effective December 31, 1970, the boards of commissioners and the state tax commission shall equalize real and personal property separately by adding to or deducting from the valuation of taxable real property, and by adding to or deducting from the valuation of taxable personal property in any township, city or county, such amounts as will produce a sum which represents the proportion of true cash value established by the legislature. The tax roll and the tax statement shall clearly set forth the latest state equalized valuation for each item or property which shall be determined by using a separate factor for personal property and a separate factor for real property as equalized. * * *"

Before approaching the inquiry as to the constitutionality of this legislation, we shall note that county equalization historically has involved the addition or subtraction of one aggregate sum from the aggregate assessed valuation of assessing districts. Ever since the revision of statutes in 1838,[3]

[1] No. 206, P.A. 1893, as amended (M.C.L.A. § 211.1, et seq.; M.S.A. and 1970 Cum. Supp., § 7.1, et seq.)

[2] Sec. 34 of No. 206, P.A. 1893, as amended (M.C.L.A. § 211.34; M.S.A. 1971 Curr. Mat., § 7.52)

[3] Revised Statutes of 1838, Title V, Chapter 2, § 14.

the commissioners of each county were mandated to equalize the assessed valuations of intracounty assessing districts "by adding to or deducting from the assessors' valuations * * * such percentum as may in their judgment produce, relatively, an equal and uniform valuation * * * of the county."[4]

As a result of such traditional equalization activity, the same percentage of additional or equalized value was spread back upon every individual property within the affected assessing district. As envisaged by No. 152, P.A. 1970, county equalization will add or subtract two different percentages or sums to local assessments, one percentage to all the real property valuations, another percentage to all the personal property valuations.

Answer to your first inquiry necessitates consideration of the constitutional provision which is either beneficially or adversely affected by No. 152, P.A. 1970, namely, Art. IX, § 3, Michigan Constitution of 1963, commonly referred to as the tax uniformity provision. It mandates:

> "The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. * * *"

The legislature has implemented the constitutional uniformity clause by the General Property Tax Law as well as the State Board of Equalization Act.[5]

Number 152, P.A. 1970, is a legislative effort to alter the existing methodology of county equalization. Such alteration is constitutionally permissible if it does not offend the basic goal and constitutional design to establish uniformity of ad valorem taxation resulting in proportionate public burdens and equality of treatment for taxpayers. Our inquiry must be: Does the separate addition or subtraction of aggregate sums to real and personal property respectively tend to, or detract from, achievement of uniform ad valorem taxation?

Uniformity of taxation implies not only absolute equality of the rate of taxation within a taxing district but also a uniform base against which the rate is applied, i.e., uniform assessments. The ideal situation exists when each and every assessment as finally equalized, constitutes fifty percent of its true cash value,[6] and then is subjected to an identical millage throughout the taxing authority.

Equalization has fallen short of the ideal as recognized judicially.[7] The proportionate spreadback of one aggregate sum upon all the properties appearing on the assessment roll of a particular district can eliminate only the existence of differential or nonuniform assessment levels among taxing

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[4] Ibid.

[5] No. 44, P.A. 1911, as amended (M.C.L.A. § 209.1, et seq.; M.S.A. and 1970 Cum. Supp., § 7.601, et seq.)

[6] By No. 409, P.A. 1965 (M.C.L.A. § 211.27; M.S.A. 1970 Cum. Supp., § 7.27), assessments must be fixed at fifty percent of true cash value.

[7] *In re Appeal of General Motors Corp.* (1965), 376 Mich. 373, 379.

units. It cannot cure nonuniform assessments existing within a particular unit.

Number 152, P.A. 1970, provides for the addition to or subtraction from aggregate local assessments of real and personal property respectively, separately determined fixed sums to presumably achieve a tax base of fifty percent for real property and a base of fifty percent for personal property as an aggregate. Undoubtedly, the legislature has felt it necessary to achieve greater uniformity as between two species of property, i.e., real property and personal property, to provide machinery which would separately bring about aggregate tax bases of fifty percent for each.

In *Conroy v. City of Battle Creek* (1946), 314 Mich. 210, 219, the Supreme Court recognized the increasing complexities of valuation and appraisal of property for ad valorem tax purposes. It noted that

> "* * * The duty of a township supervisor in making an assessment as a rule was comparatively simple. It was not difficult to assess farm lands or those of villages and small cities. * * *"

The relative difficulty encountered in the uniform assessment of farm lands is no greater today than it was in the past. Yet, the rural township assessor encounters extreme difficulty in the valuation of the Xerox equipment in some of the offices of his village, the machinery and fixtures of the small industry in the township, the furniture and fixtures in the local dress shop. His commendable effort to assess the farm lands at fifty percent of true cash value may well be destined to success by his knowledge of farm values, but his effort to assess items of personal property at fifty percent may fall considerably short of success and the personal property may be assessed at the average of but twenty-five percent.

In the past, the county board of commissioners, aided by their county equalization department, would cure the assessor's shortcoming, i.e., the unintentional underassessment of personal property, by adding a sum to the aggregate assessed valuation of the township, which sum, combined with the aggregate total appearing at the bottom of the assessment roll, would equal fifty percent of the true cash value of all taxable property in the township. Although this addition was based exclusively upon the unintentional underassessment of personal property, it was spread back upon all properties in the township, both real and personal.

In short, the underassessment of one species of property, i.e., personal property, resulted in penalizing all of the property owners, including owners of real property, because of the proportionate spreadback of the sum added by equalization. Number 152, P.A. 1970, clearly is intended to obviate the detrimental and nonuniform result above indicated. Pursuant to its provisions, the county board of commissioners would neither add to nor subtract from the aggregate assessed valuation of the real property (in our hypothetical township). The tax base of the personal property, however, would be doubled from twenty-five percent to fifty percent by adding to the aggregate personal property assessment of the township a sum equivalent to that appearing at the bottom of the personal property roll.

In our example, the tax statement or bill mailed to a real property taxpayer would indicate that his equalized valuation is identical to his assessed

valuation while the tax statement sent to the owner of personal property would indicate that his equalized valuation (the tax base) is double the assessed valuation.

It is universally accepted that the tax base of properties subject to the general ad valorem tax must be fifty percent of its true cash value. The methodology of equalization which is intended to crystallize such tax base should be adapted to that purpose. It definitely appears that No. 152, P.A. 1970, results in such adaptation. It is a step toward greater uniformity of taxation and an effort to improve the "system of equalization of assessments." In consequence, it is constitutional legislation.

I have examined closely the Federal and Michigan cases dealing with tax uniformity, including our own Supreme Court cases of *Titus v. State Tax Commission* (1965), 374 Mich. 476, and *In re Appeal of General Motors Corporation, supra.* Their rationale affirms my conclusion of constitutionality. Their unqualified endorsement of the absolute standard of uniformity and the principle of equal treatment lend support to any legislation which is designed to promote a uniform tax base, i.e., the establishment of equalized value at an identical proportion of true cash value.

The *General Motors* case, *supra,* held specifically that the owner of property complaining of the assessment of his property is entitled to have that assessment fixed at the average proportion of the true cash value of all taxable property, including real and personal, at which other properties in the taxing district are assessed. The Court noted that "all taxable property, real and personal, is placed in one category to be uniformly assessed and taxed."[8]

This statement can be construed as having two distinct meanings, either one of which is a verity. It may mean that under the statutory provisions then in existence (1965), real as well as personal property was combined during the processes of equalization. On the other hand, the statement may be a concise paraphrase of the uniformity provision of Art. IX, § 3 of the Constitution, which provides "for the uniform general ad valorem taxation of real and tangible personal property not exempt by law." As discussed hereinafter, No. 152, P.A. 1970, does no violence to either construction of the court's language.

Assuming that the court's identification of taxable real and personal property as "one category" is expressive of the then existing statutory provisions, it is clear that its binding effect exists only at legislative sufferance. The legislature, by providing for separate equalization of real and tangible personal property, could alter or rescind this "one category" rule.

On the other hand, if the court's statement is expressive of the constitutional uniformity clause, its compelling force must be given the same scope and effect as Art. IX, § 3, itself. That tax uniformity clause simply demands

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[8] *In re Appeal of General Motors Corporation, supra* (1965), 376 Mich. 373, 378. In a footnote to that aphorism, the Court stated (p. 378):

> "A uniform mode of assessment does not necessarily produce a uniform result. Applying the same formula of assessment to personal property as is applied to real property could produce an inequality which the uniformity provision was designed to prevent. * * *"

that the final tax base under the ad valorem tax laws, i.e., assessments as finally equalized, must amount to the same proportion of true cash value, not exceeding fifty percent, and that such uniform tax base be subjected to an identical uniform millage. In other words, the Constitution prohibits the utilization of different levels of true cash value for different species or classes of property and additionally proscribes different millage rates in a taxing unit against different properties.

Number 152, P.A. 1970, continues recognition of this basic constitutional design. It envisages that by separate equalization, both real and personal property will be *finally* assessed at the same proportion, namely, fifty percent, of true cash value. The amendatory Act No. 152, additionally appreciates the fact — footnoted in the *General Motors* case, *supra* — that application of the same formula in the equalization of personal property as is applied to equalize real property, may yet produce a nonuniform tax base.

It is my opinion that No. 152, P.A. 1970, is a legislative design to achieve greater uniformity by the separate computation of the tax base (equalized values for real and personal property, respectively). It is designed to prevent inequalities which might result from a single or one-step equalization process. Consequently, it implements and furthers the constitutionally mandated tax uniformity.

In answer to your second question, I find that the provisions of No. 152, P.A. 1970, are not in conflict with any other section of the general property tax act. Further, if an inconsistent provision should be discovered, it would have to yield to the 1970 legislation which, by its terms, is to be effective "notwithstanding any other provision of this act," i.e., the general property tax act.

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BROKERS: Definition of real estate broker.
LICENSING AND REGULATION: Licensing of real estate brokers.
REAL ESTATE: Broker licensing requirements for owners of real estate.

A profit corporation, partnership or individual whose principal business activity is buying and selling real estate, but which does not engage in the sale of real estate for others, is required to be licensed as a real estate broker.

A profit corporation, partnership, individual or other legal entity engaged in the buying and selling of real estate for its account on a continuing basis, but which has another vocation, is required to be licensed as a broker, unless the real estate work of such entity is not its main occupation or where it spends a major portion of its time.

A profit corporation, partnership or individual engaged in the sale of its own property and subject to the broker licensing requirements is not required to have a license if it makes those sales through a duly licensed broker.