

STATE OF NEW JERSEY

**Report of the Examination and Investigation of
the Management of the Affairs of the
State Board of Tax Appeals**

**Conducted by Frank J. Murray, and presented to
His Excellency Walter E. Edge
Governor of the State of New Jersey**



TRENTON, NEW JERSEY

MAY 28, 1945

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SUMMARY OF REPORT

of

**Frank J. Murray, to His Excellency, Walter E. Edge, Governor of
New Jersey, re Division of Tax Appeals Investigation**

This report is based upon the testimony and evidence taken at public hearings which ended in December, 1944, and therefore does not cover the period after December, 1944.

This report is based upon your Executive Order and is made in accordance with Chapter 315 of the Laws of 1941, under which, by your appointment, I made the examination and investigation for you, and report the facts and conditions found by me.

The charges preferred against four of the Board members were not referred to me for trial, and I could not try same, and therefore can not report the guilt or innocence of any of such members as to any of such charges.

Exhibits No. 4, No. 5, No. 6 and No. 25 covering Jersey City assessments and State Board judgments thereon, and Exhibit No. 3 covering Hoboken assessments and State Board judgments thereon, and Exhibits No. 4 and No. 5 covering Newark assessments and State Board judgments thereon, were prepared and completed, before or during the investigation, by John Warren, Esquire, and carefully and completely checked and verified by me through the State Comptroller's auditors. In the questioning of witnesses, I was principally and ably assisted, at my request, by Mr. Warren. I admitted no testimony, evidence or exhibits offered by him which I deemed to be irrelevant or immaterial, and his participation was, at all times, under my complete control.

Section 1 states the terms of service of the Board members so that the dates of the matters reported on may be related thereto.

Section 2 covers the appeals of the Guardian Life Insurance Company against Jersey City assessments which were before the Board for about five years. Most of these appeals could have been tried in the Spring of 1942, and the rest of them in the Spring of 1943. The Board seems to be responsible for delays over amendments to petitions of appeal, execution thereof, etc., most of which delays it explains by litigation between the Spring of 1941 and the Summer of 1943, which, however, does not seem to have been fully justified. However, the most serious happenings in this extraor-

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dinary case occurred between January and July, 1944, while the Board, after denying the motion of Jersey City to dismiss all the appeals on January 25, 1944, reopened the matter and then refused to decide the motions, and took the case out of the hands of Commissioner Kreamer to whom it had been referred, and the entire Board proceeded to hear the appeals on the merits or valuations, under ensuing, almost chaotic conditions for five months with practically no progress in the hearings. The high point of error in these proceedings was the vote of Commissioners Sharp, Huegel and Smith, on January 25, 1944, to dismiss all the petitions of appeal, and their vote on the same day against the denials of the motion of Jersey City to dismiss these appeals. Commissioners Harrigan, Hoff, Kreamer and President Waesche prevented the dismissal of these appeals, but thereafter Commissioners Harrigan and Hoff joined with Commissioners Sharp, Huegel and Smith in reopening the motions and in the refusal to decide them, and in taking the hearing out of Commissioner Kreamer's hands and having the entire Board conduct the hearing on the merits or valuations. I can find no justification for the said action of Commissioners Sharp, Huegel and Smith on January 25, 1944, or for the said actions of themselves and Commissioner Harrigan after January 25, 1944. If the action of Commissioners Sharp, Huegel and Smith, on January 25, 1944, had been successful, 62 appeals covering four years (1939-1942) involving about \$14,000,000.00 in assessments, and about \$700,000.00 in taxes, would have been summarily and conclusively thrown out. Throughout this period, in all the votes and proceedings of any moment, Commissioner Kreamer and President Waesche voted in opposition to Commissioners Harrigan, Huegel, Sharp and Smith except, on the occasion of January 25, 1944, when they voted with Commissioners Harrigan and Hoff to prevent the dismissal of the petitions as aforesaid. These withheld motions were never decided, and the hearings ended in July after a challenge filed, and charges preferred, by Mr. Warren and the City Affairs Committee.

Section 3 states that the Board does not, in my opinion, keep a full record of its proceedings, within the meaning of the Statute. The hearing members do not report on the testimony, and do not make adequate reports to the Board. The records of reports of hearings are inadequate; the information appearing on petitions of appeals is inadequate. This lack of full and adequate records affects the efficiency of the Board in its ability to perform its functions as intended by law, and the qualities and consequences of their judgments. That it is necessary that County Boards receive copies of the judgments as promptly as possible, which the State Board has declined to send, although same could be done with less expense and with the saving of time as against the pres-

ent practice of sending less frequent, but late, notices of judgments to the County Boards.

Section 4 gives complete data for several years last past as to the number of meetings of the State Board in Trenton, which average 27 per annum—also as to the total number of appeals filed; the number of appeals filed from Essex and Hudson Counties, respectively; the number of appeals filed by Newark, Jersey City and Hoboken, respectively; also the number of appeals heard and determined; the number of hearings held and average number of appeals heard per hearing during the five-year period 1939-1943, and the average number of cases heard per member during that period; also the number of appeals pending on January 1st of the years 1942 to 1945, inclusive; the number of judgments per meeting entered in each of those years and analysis of Commissioner Kreamer and Secretary Cook, indicating that more than a majority of the judgments entered are consent judgments where no testimony has been heard and the litigant parties agree upon the valuation which becomes the amount of the judgment. This seems to indicate a fair, but not an exceptionally good or excellent condition as to expedition in disposing of the work of the Board and of time and attention thereto of the members.

Section 5 deals with the situation of Commissioners Harrigan, Huegel, Smith and Sharp meeting as a group to discuss and decide matters pending before the Board, and then voting as a unit thereon at the Board meetings, without Commissioner Kreamer and President Waesche having been present at or invited to such group meetings, and without bringing to the attention of said two members the discussion that took place at such group meetings. This practice seems to have started about October 26, 1943, or shortly prior thereto, in connection with the decision in the Central Railroad appeal for 1943, and to have continued thereafter, principally, if not exclusively, in matters relating to railroad appeals. The explanation given was that this practice was followed because of the known opposition of Commissioner Kreamer and President Waesche to the views of this majority group on the railroad appeal matters involved. This seems to be a bad as well as an unfortunate practice for members of a judicial body.

Section 6 deals with an extraordinary situation developed by the filing by Jersey City of 58,000 appeals and by Hoboken of about 8,000 appeals, for 1943 and 1944, respectively, requesting the State Board to increase the City assessments for those years. In essence, these are not ordinary appeals but are appeals against the equalization and downward revision made by the Hudson County Tax Board in March, 1943, and March, 1944, respectively. (These 1944

appeals had not been filed when the last hearing in this investigation was heard, but the Secretary has informed me of their subsequent filing.) The Statute which deals with appeals against County Board equalizations and revisions requires such petitions to be filed months before the time these were filed, and the State Board rules as to such appeals contain like time limit requirements. The Board members have testified they have no power to raise City assessments or to consider testimony in excess of City assessments, from which it would appear State Board would have no authority to grant the increases prayed for by these petitions. The State Board seems to be in a quandary as to what action to take as to these petitions, and up to the close of the public hearings in my investigation the Board had taken no action thereon.

Section 7 deals with a special Act concerning the correction of errors under which the Board has made few reductions but which is important because the Board deems the Statute to be practically mandatory and makes reductions without any inquiry or testimony or notice when the mayor or assessor consents thereto, regardless of the time, or lateness of the appeal, and enters Judgments the day the appeals are filed. In these cases there was no proof of the existence of any error and the time to file an appeal had long since passed. The law does not seem to be mandatory and it would appear that the Board has the right to demand proof of the existence of the errors. Such reductions should not be granted without the consent of the municipality, properly evidenced, or without proof of the existence of the error.

In one of these cases, John Warren, Esquire, in September, 1938, as attorney for E. J. E. Realty Co., filed such a petition bearing thereon the consent of Mr. Potterton, the assessor of Jersey City, but it was returned to him; thereafter he appeared before the State Board explaining the case, which appeared to have extreme justification, and the Board took no action thereon, and it was not until nearly two years later, after he had instituted a suit against Jersey City, that the State Board, at the request of Jersey City, within two days after the institution of said suit, granted the reduction on the said consent petition of September, 1938. There appears to be no explanation to justify the different practice of the Board in this case.

Section 8 deals with elaborate schedules covering land assessments of property situated principally in Jersey City, and some in Hoboken and Newark, and State Board judgments thereon, with very complete details as to each property, and each judgment, and percentage comparisons, etc. It appears from these Exhibits and from other testimony and evidence that Jersey City land assessments remained practically the same from 1929 through 1942, and

that the effect of State Board judgments, particularly those judgments which were entered before November 30, 1942, on reports and recommendations of Commissioner Sharp, was to unduly uphold excessive Jersey City land assessments. It seems clearly indicated also that the same criticism should be made of judgments entered on reports and recommendations of Commissioner Smith in Hoboken as well as in Jersey City appeals. Two of these Exhibits also show considerable lack of uniformity as to front-foot land values of comparable properties in the same block or contiguous.

It appears that the Hudson County Board for the assessment years prior to 1942, held practically no hearings on appeals, and affirmed practically all Jersey City assessments, and this situation changed when the new Hudson County Board took office in August, 1942, and proceeded to hear 1942 appeals and to grant drastic reductions; immediately thereafter, there was a marked change in State Board judgments showing very substantial increases in reductions and reductions in nearly all cases, although considerably less than the reductions that had been granted by the County Board. The attorney of Commissioners Harrigan, Huegel, Sharp and Smith was given photostatic copies of these Exhibits several weeks before the close of the hearings and they had ample time and opportunity to check the same. There was no dispute as to their accuracy; the members did not check the Exhibits and made objections only of a general nature thereto, namely, the general conclusion that they were not fairly representative, because they were a spot check, and made on a percentage basis, etc., although they testified that if the Exhibits covered every assessment and every State Board judgment for the years involved, the same general objection as to the percentage basis would apply. It was admitted that in consent appeals (wherein no testimony is heard), which seem to represent a majority of the total Board judgments (other than in Jersey City appeals) and in undefended appeals (wherein the Board feels bound by the testimony of one side), that judgments are entered regardless of true value and regardless of the effect on uniformity. In the consent cases, the Board has no knowledge of the true value and, in the undefended cases it feels that it cannot use its own knowledge and judgment. This explanation and justification, however, does not seem to apply to many Jersey City cases, as that City rarely consents to a reduction and rarely fails to contest an appeal.

I am of the opinion that these Exhibits are fairly representative of Jersey City appeals and State Board judgments thereon for the years covered thereby, and that if for the years involved, every Jersey City appeal (every assessment and every State Board judgment) had been included in these Exhibits the result would not

have been sufficiently different to materially affect the percentages of reductions disclosed by these Exhibits or the inferences to be drawn therefrom.

Sections 9, 10, 11 and 12 deal with the lack of uniformity in valuations created by State Board judgments—the use of personal knowledge and judgment of value by Board members; judgments entered on consents and State Board judgments for more than true value, and explanations thereof—most of which is covered generally in other parts of this Summary, and in the Recommendations accompanying this Report. The particular observation that might be made at this point is that the State of New Jersey has an interest in the quality of the judgments entered by the State Board, and that all taxpayers of the State have such an interest therein, and that the interest in the quality of State Board judgments is not limited to the particular litigants in the particular appeal, and that a higher degree of care should be demanded as to the judgments of this higher appellate State Board having statewide jurisdiction, than may be thought necessary or customary for the more local County Board which hears the first appeal direct from the municipality. Conditions which result in the entry of more than a majority of State Board judgments without regard to the value of the properties involved, whatever may be the reason, cause or explanation, should be corrected, by the correction of the practices and procedures of the Board no matter of how long standing, and by legislation, to the extent that legislation may be necessary. No State Board judgments should be entered unless the Board has a reasonable basis for the conclusion that its decision is according to the true value of the property involved.

Section 13 deals with the relations between President Waesche and Commissioners Harrigan, Huegel, Sharp and Smith, and covers the controversies preceding and following the filing of the majority opinion in the Central Railroad appeal of 1943; the engaging by the majority members of an outside lawyer to write the opinions in that and in the Pennsylvania 1943 case; statements and dissenting opinions of President Waesche criticizing those members; his investigation of State Board judgments entered on recommendations of Commissioners Harrigan, Huegel and Smith in Jersey City appeals; counter charges of those members against President Waesche, and the general conditions in the Board concerning President Waesche's suspicions of said members and his loss of confidence in their actions, and their resentment thereof, etc.

Some of President Waesche's suspicions and charges seem to have been justified by the circumstantial evidence in this investigation, although not completely proved as facts, as a legal proposition. There is no actual proof of the control of the majority mem-

bers by any outside influence. The State Board judgment in the 1942 Central Railroad case was followed by considerable objection and opposition on the part of State officials, as well as on the part of Jersey City, and was appealed by the State to the Supreme Court, which, probably, was one of the reasons which influenced the majority members to decide the 1943 case differently; this they had the right to do if, in their best and independent judgment, after a proper effort to get sufficient information to form a conclusion, they believed that they had made a mistake in the 1942 case. The merits of the majority opinions and of the dissenting opinions in these 1943 railroad cases is not an issue in this investigation.

President Waesche has publicly attacked the integrity of these members; he has made a very careful and thorough investigation of many of their judgments and has reported that they are far in excess of the true value of the property; his reports represent his opinions of values, based upon his investigations and they are entitled to respect. His valuations may have been more correct than most of the judgments, and the Board members criticized by him would not and could not have disputed his valuations as to those cases which had been undefended or settled by consent, or disposed of by dismissal of the appeals for lack of prosecution (thereby automatically affirming the 1941 assessments) or where they contend they could not use their own personal knowledge and judgment as to value, but they would have disclaimed responsibility for the result upon legal grounds or the years' old practice of the Board; Commissioner Harrigan made a written answer to President Waesche's attacks upon the latter's reports, which explains them upon the aforementioned, as well as other, grounds.

The majority members have charged that President Waesche was prejudiced against Jersey City but there has been no proof of that charge. It may be that he had been somewhat intolerant of the majority's reversal in 1943 of the position they had taken in 1942 in deciding the railroad appeals, but the course followed by the majority members in connection with, and prior and subsequent to, their decisions in the 1943 railroad cases appears to be bad practice and worthy of criticism and to deprive them of any reason to complain about his reaction thereto. There appears to be no doubt of the sincerity of President Waesche.

The matters covered by Section 13 of this report show a condition in the Board which has affected its efficiency adversely and has, no doubt, lessened public confidence in the Board and in its judgments.

Section 14 relates to delays of the Board in reporting and entering judgments and in hearing appeals, and in the writing up of docket cards and hearing minutes. While this does not seem to

be a matter for major criticism, it is one requiring improvement. Since the start of the investigation the situation, as to the writing up of the records, has been much improved and they have been brought up-to-date as far as possible. I am informed, further, by the Secretary, that there has been a marked improvement in 1945 in the expedition with which appeals have been heard and reported and judgments entered.

CONCLUSION

It should be kept in mind that we are dealing here with decisions of a Court and with decisions of Judges (as I deem the State Board to be a Court), and by decisions I mean not only judgments but all official actions of the Board and of its members which constitute conclusions, opinions or decisions; that a high percentage of these decisions are based upon conflicting testimony and argument, that some of these decisions may be based upon no testimony whatever; that others of these decisions may be based upon completely accepted one-sided testimony; that in making some of these decisions Commissioner Kraemer and the lay members are following practices of the Board of many years' standing, which they believe to be correct or necessitated by the volume of cases, and which their predecessors have followed; that in making others of these decisions Commissioner Kraemer and the lay members believe that they are proceeding in accordance with legal requirements and limitations which control them; that decisions, in contested matters, involve not only findings on questions of fact but also determinations of questions of law (procedure and rules of evidence as well as substantive law); that the lay members are required to make, and to participate in the making of, decisions on these questions of law notwithstanding their lack of legal education, knowledge and training.

These conditions do not remove or lessen the harmful consequences or effects of some of these decisions or fully explain or justify them, but they must be considered in connection with these decisions, and not only in weighing the evidence but also in deciding whether or not any proven facts constitute error and wrongdoing and, if so, the nature and extent thereof, and the degree of responsibility of the Board members, particularly of the lay members, therefor.

In this investigation there is no legal proof of corrupt conduct or corrupt motives on the part of any Board member; it is shown that some of the actions of Commissioners Sharp, Huegel and Smith throughout have been consistent with the interests of Jersey City in the various State Board matters in which that city had an interest, and that the same was true of the actions of Commis-

sioner Harrigan after January 25, 1944, in connection with the Guardian Life Insurance case, and in connection with the railroad cases, but there is no legal proof that their actions were motivated or influenced by anything other than their own independent judgment, however misguided, or mistaken, any of them may have been in any of such actions. In view of the fact that the lay members of the Board are persons of ability and broad experience in the field of real estate valuation and taxation and the review of assessments, their lack of legal knowledge and training (though it has been a source of considerable handicap and confusion to them and may explain some of their actions or partly explain others) cannot entirely excuse them from the censure and criticism which some of their important official actions appear to invite and deserve or from responsibility for some of the unfortunate suspicions which have been aroused. It is only fair to add, however, that this applies in a considerably lesser degree to Commissioner Harrigan, and that it has been mitigated no little, in his case, by reason of other and impressive official actions of his.

Commissioner Kreamer is an able and thoroughly informed tax lawyer. He has been unusually diligent in preparing and keeping revised and supplemented to date a series of 30 ready-reference books covering all the statutes and decisions on particular legal questions which a Board member hearing tax appeals must be prepared to decide. He appears to have performed his duties as a Board member in an able and conscientious manner. His reports, upon which judgments have been entered in Jersey City appeals, appear to be the nearest approach to true value (though followed very closely, if not equally, by those of Commissioner Harrigan, in that respect).

From numerous Exhibits and from the testimony in the investigation, it is apparent that President Waesche has been a keen and industrious student of the statutes and decisions concerning legal questions confronting the State Board and involved in its work, hearings, judgments, practices and procedures. He appears to be a thoroughly qualified tax lawyer. As President of the State Board since July, 1942, he has displayed extraordinary initiative in urging changes and reforms and in opposing practices and procedures in the work of the Board.

Occasionally, he has displayed some lack of judicial temperament, and some impatience with the course followed by the lay members, as well as with the adherence, by all the hearing members, to practices and procedures which the Board has followed for many years, or which they feel bound to follow by law; he has evidenced strong convictions of the correctness of his opinions, which appear to be sincere convictions and based upon diligent study, examination and investigation. It may be that he has been

overly suspicious in some instances, or somewhat intolerant of some of the opinions or positions of the lay members but, if so, it is indicated that it was not the result of any personal feeling, prejudice or self-interest, but of his honest and independent judgment. These observations all go to the manner or method, rather than to the substance, and are minor considerations compared to the major quality of his work.

His position in several important instances has been either right or apparently justified by the circumstances, and he has displayed unusual leadership in efforts to improve conditions in the Board; he has been a very able, diligent and conscientious President and member of this Board.

I have carefully studied, examined and checked the three thousand pages of Exhibits and Testimony in this investigation and have extracted therefrom the complete essence thereof so that I might present to you, by this report, the complete picture as I got it.

From that same study and from an examination of the statutes and court decisions of this State, from a study of tax systems in other States, and from my own experience in taxation, I have prepared the Recommendations accompanying this Report.

I regret the apparent delay in concluding this task but beg to advise you that it was not the result of procrastination as I have devoted the equivalent of three full months, since the close of the hearings in December, to this matter.

Respectfully submitted,

FRANK J. MURRAY,
Investigator and Examiner.

**REPORT OF EXAMINATION AND INVESTIGATION—
FINDINGS**

REPORT OF EXAMINATION AND INVESTIGATION

In the Matter of the Examination and Investigation of the management of the affairs of the State Board of Tax Appeals (now known as the Division of Tax Appeals in the State Department of Taxation and Finance) of the State of New Jersey, in so far as the management and affairs thereof have been managed and conducted by J. William Huegel, David R. Smith, Richard J. Harrigan, Thelma Parkinson Sharp, Donald M. Waesche and Albert H. Kreamer, as members of said Board.

To His Excellency, WALTER E. EDGE, Governor of the State of New Jersey:

In pursuance of your Executive Order Number 6 made in the above-entitled matter under date of July 27, 1944, I have completed the said examination and investigation in accordance therewith and hereby respectfully report my findings to you:

Chapter 315 of the Laws of 1941, under which you so appointed me by said Executive Order Number 6, provides that such investigation and examination may be made privately or publicly, but in response to your published statement at the time you so appointed me, said investigation and examination has been made by me publicly, at public hearings, and my findings and report, accordingly, are necessarily based upon the testimony and evidence taken at the public hearings held by me. Sixteen such hearings (each of which occupied a full day, with the exception of one which occupied one-half a day) were held by me in Trenton, at which Duane E. Minard, Sr., Esquire, appeared as attorney of said David R. Smith, J. William Huegel, Thelma Parkinson Sharp and Richard J. Harrigan, and at which hearings John Warren, Esquire, also appeared. At these hearings, Mr. Warren assisted me, at my request, in the examination of witnesses and in the preparation of exhibits which were admitted in evidence.

Said J. William Huegel, David R. Smith, Richard J. Harrigan and Thelma Parkinson Smith attended most of these hearings, being absent from a few because of illness or their own volition. The said Donald M. Waesche and Albert H. Kreamer attended some of the hearings and, when absent, were absent of their own volition. Said Donald M. Waesche and Albert H. Kreamer, who are lawyers, were not represented by attorneys. Charles E. Cook, the Secretary of said Board or Division, attended most of the hearings, as did members of the office staff of that Board or Division. Whenever any person was examined at any of said hearings, the members of said Board or Division and the Secretary thereof, and said Duane E. Minard, Esquire, as attorney for the four members aforementioned, were accorded full opportunity and permitted to cross-examine any such person on any phase of the matter concerning which he had been examined or questioned, and said members and secretary and said Duane E. Minard, Esquire, as attorney for said four members, were given like opportunity and permitted to introduce other witnesses and other evidence to explain, enlarge upon or

clarify the matter, situation or condition under investigation or scrutiny, and said public hearings were conducted in accordance with the provisions of Chapter 315 of the Laws of 1941. While the legal rules of evidence were not at all times strictly enforced, in the examination or cross-examination of witnesses, or in the admission of evidence, they were fairly approached throughout the hearings, and, when relaxed, it was for the purpose of getting as complete as possible an understanding, explanation or clarification of matters involved, and this applied to the cross-examination as well as the examination of witnesses and the admission of exhibits in evidence, whether by or from members of said Board or Division or otherwise.

Throughout the testimony and exhibits said Board or Division is referred to as the State Board of Tax Appeals, and hereinafter in this report I shall refer to it as the State Board.

It was not referred to me to hear or try the charges which had been preferred by John Warren, Esquire, and The City Affairs Committee, against four of the members of the said Board or Division or to render any opinion or decision thereon, but only to investigate and examine the management and affairs of said Board or Division as set forth in said Executive Order pursuant to the provisions of Chapter 315 of the Laws of 1941, and to find and report the facts. Some of the matters mentioned in those charges concerned the management and affairs of said Board or Division and came within the scope of this investigation and examination and such matters, for that reason, were necessarily investigated and examined by me, and the facts found and which are hereby reported include the same.

I find and report as follows:

Terms of Board Members.

1. As the matters covered by this report occurred at various times, and some of the members of the State Board mentioned in said Executive Order were not members thereof at the time of the occurrence of some of such matters, I deem it advisable to include at the beginning of this report a statement of the time during which they have been members of the State Board. Donald M. Waesche served from July 28, 1942, to date; Albert H. Kreamer from July 1, 1938, to date; Thelma Parkinson Sharp from July 1, 1932, to date; J. William Huegel from July 1, 1931, to July 1, 1934, and again from April 26, 1939, to date; David R. Smith from July 1, 1934, to July 1, 1940, and again from July 7, 1941, to date; Richard J. Harrigan from April 18, 1939, to date. J. William Huegel also served the State Board in the capacity of Field Secretary from July 15, 1934, to July 31, 1935; David R. Smith served the State Board in the like capacity from July 8, 1940, to July 6, 1941.

Appeals of Guardian Life Insurance Company.

2. One of the matters which occupied much of the time of the hearings was 52 appeals of the Guardian Life Insurance Company and the Galwhite Corporation to the State Board against assessments on real property situated in the City of Jersey City for the years 1939, 1940, 1941 and 1942, then pending before, and not yet heard by, the State Board, and in which John Warren, Esquire, represented the appellants, except as to one appeal for the year 1942 on property of the Galwhite Corporation, wherein John W.

Ockford, Esquire, appeared as attorney for the appellant. Since there seems to be no reason for further reference to the one appeal for 1942 where Mr. Ockford represents the appellant, I shall hereafter refer to all these appeals as the Guardian appeals.

On or before December 15, 1939, the Guardian filed with the State Board ten petitions of appeal against the 1939 assessments. On or before December 15, 1940, the Guardian filed with the State Board twelve petitions of appeal against the 1940 assessments. None of these 1939 or 1940 appeals having been listed by the State Board for hearing, Mr. Warren, as attorney of said taxpayer, on April 15, 1941, moved before the State Board to amend said appeals for said years, which motion was opposed by Counsel of Jersey City. The State Board took no action thereon until June 10, 1941, when Mr. Warren's motion to amend these appeals was denied by the State Board. On October 4, 1941, on application of Mr. Warren, a writ of certiorari was issued out of the Supreme Court of New Jersey to review said denial of the State Board, and on October 10, 1941, the Supreme Court (by Justice Bodine) entered an order reversing the State Board and ordering the State Board to permit Mr. Warren to amend said petitions of appeal in any manner which he might desire. Accordingly, on October 21, 1941, the said 1939 and 1940 petitions of appeal were amended by the filing of amended petitions therefor. On December 2, 1941, the State Board listed these appeals to be heard by Commissioner Sharp at Jersey City on January 8, 1942. On January 6, 1942, the City of Jersey City appealed the said Supreme Court decision of Justice Bodine to the Court of Errors and Appeals, whereupon the State Board adjourned the scheduled hearing which had been set for January 8, 1942. On January 13, 1942, Mr. Warren appeared at a State Board meeting and requested that the 1939 and 1940 Guardian appeals be relisted for immediate hearing, which request was then and there opposed by the Counsel of Jersey City on the ground that they could not be heard until the Court of Errors and Appeals had rendered a decision, and the State Board reserved decision on said request of Mr. Warren. On March 3, 1942, Mr. Warren again appeared at a meeting of the State Board and requested the relisting of these 1939 and 1940 Guardian appeals for hearing, and the State Board denied that request. On the same date, Mr. Warren sent a letter to the State Board on the same subject. On July 22, 1943, the Court of Errors and Appeals dismissed the appeal of Jersey City from Justice Bodine's decision and held that the matter was not properly before it and that it had no jurisdiction.

On January 8, 1940, the State Board adopted a resolution (Commissioner Kreamer voting "no") providing as follows: "No amendment to any petition whatsoever will be allowed by the Board unless the provisions of Rule 9A are complied with"; the then Rule 9A of the State Board provided as follows: "Motions based upon objections to the jurisdiction of the Board or to the sufficiency of the petition of appeal apparent on the face thereof, shall be made returnable on any Tuesday in the forenoon when the Board is in session at Trenton. At least four days' notice thereof shall be given to the adverse party." Following the passage of said resolution on January 8, 1940, and until October 10, 1941 (when Justice Bodine ordered the State Board to grant the amendments to said petitions of appeal), all motions to amend petitions of appeal were made in accordance with said Rule 9A, and during that period the State Board denied all such motions

when they were opposed by the municipality, but granted such motions if not opposed by the municipality, and it seems that this practice was known to the attorneys of the municipalities but was not known to the taxpayers. Mr. Warren was not aware of this practice of the State Board (as to denial of motion to amend if opposed by municipality) when he made his application to amend in April, 1941, or when the State Board denied his application in June, 1941, and he did not learn of it until after he had obtained a writ of certiorari in October, 1941, when he was informed of it by Mr. Cook, the Secretary of the State Board. After Justice Bodine's order to permit amendments of October 10, 1941, and until Jersey City appealed to the Court of Errors and Appeals on January 6, 1942, motions of taxpayers to amend petitions of appeal were granted by the State Board generally and without regard to whether or not the municipality opposed; however, between the time of the Jersey City appeal to the Court of Errors and Appeals (January 6, 1942) and the date of the Court of Errors and Appeals' decision (July 22, 1943) the practice of the State Board on applications to amend petitions of appeal was to reserve decision thereon but to list the appeals for hearing, and to have the hearings take place, and to withhold the actual entry of judgments pending the decision of the Court of Errors and Appeals. At its meeting of September 7, 1943, which was its first meeting following the decision of the Court of Errors and Appeals, the State Board passed a resolution granting all applications for amendments of petitions of appeal then pending, and since that time, as a matter of practice, the State Board has permitted amendments of petitions of appeal when requested without regard to the attitude of the municipalities. At its next meeting, following said meeting of September, 1943, the State Board entered hundreds of judgments in cases where hearings had been held long before but upon which entries of judgments had been withheld because of its reserved decisions on applications to amend petitions of appeal pending the decision of the Court of Errors and Appeals.

The aforementioned litigation concerned only the 1939 and 1940 Guardian appeals, upon which applications to amend had been made, and the only issue involved in that litigation was the right of the taxpayer to amend the petitions of appeal. By the time of the decision of the Court of Errors and Appeals (July, 1943), appeals as to the same properties for the years 1941 and 1942 had been filed with the State Board but no application had been made by the taxpayer to amend the 1941 and 1942 appeals, and they were not therefore involved in the litigation, and the State Board could have listed for hearing the 1941 appeals in 1942 and the 1942 appeals in 1943, but the explanation given for not so listing the 1941 and 1942 appeals was that they covered the same properties as those involved in the litigation.

When Mr. Warren applied to the State Board on April 15, 1941, to amend the 1939 and 1940 petitions, there were then five Guardian appeals for the years 1939 and 1940 pending before the State Board which were not included in his motion to amend, and as to these five cases he made no request to have the appeal petitions amended and they were never involved in the litigation, and these were among the appeals which had been listed by the State Board for hearing in Jersey City on January 8, 1942, but the State Board adjourned the hearing as to these five cases as well as to the others. The explanation given for not listing these five cases was that Guardian appeals for subsequent years covered the same property and it was felt

that all Guardian appeals should be listed for hearing together and not until the Court of Errors and Appeals had returned its decision.

After the decision of the Court of Errors and Appeals (July, 1943), Mr. Warren renewed his request to the State Board to list the Guardian cases for hearings. At its meetings September 7, 1943, to November 22, 1943 (both inclusive), the State Board listed for hearings 3,968 appeals of other taxpayers throughout the State, including many at Jersey City covering property located there, and including appeals for the years 1940, 1941 and 1942. The Guardian cases were not listed for hearing by the State Board until December 7, 1943, at which time the hearings were set to be held in Jersey City on January 6, 1944. Mr. Cook, the Secretary of the State Board, testified that these Guardian cases, and the matter of listing them for hearing, had often been discussed by him with the State Board, and that any decision as to same was the decision of the State Board. He further testified that the City of Jersey City had requested delay on these Guardian cases, and that on or about December 7, 1943, he had informed the officials of Jersey City that there would be no more delay.

The State Board referred the Guardian cases to be heard by Commissioner Kreamer.

Mr. Warren filed further amendments to the petitions of appeal then pending, which further amendments raised the question of discrimination. Commissioner Kreamer met at Jersey City on January 6, 1944, to hear these appeals, at which hearing there was much argument and motions of Counsel of Jersey City against proceeding with the hearing and to the amendments, etc., and at that time, Commissioner Kreamer granted the motion of Mr. Warren to file further amendments to the Guardian petitions of appeal by filing amended petitions therefor, and granted the motion of Jersey City to adjourn the hearing to January 12, 1944. (On January 12, 1944, Commissioner Kreamer adjourned the hearing pending the outcome of the State Board's decision on the motions hereinafter mentioned.) On January 6, 1944, Counsel for Jersey City filed with the State Board three notices of motions to be heard by the State Board at Trenton on January 18, 1944; the first motion was for an order of the State Board to dismiss all of the 52 original Guardian petitions of appeal on the ground that the Board had no jurisdiction to file the petitions or to hear the appeals for the reason that the petitions of appeal had not been signed by an officer of the Guardian corporation, and that the rules of the State Board require that petitions of corporations be so signed; the second motion was for an order of the State Board to dismiss the amended Guardian petitions, and another motion was for an order of the State Board to dismiss both the original petitions of appeal and the amended petitions of appeal on the ground that the County Board of Taxation had had no jurisdiction. These motions were made returnable on January 18, 1944, but, because of the inauguration of the Governor, they were adjourned to January 25, 1944, and on that later date the entire Board at Trenton heard argument of Counsel for Jersey City and Mr. Warren. Counsel for Jersey City complained that the petitions of appeal did not comply with the rules because they had been signed by Burye B. Pouncey, Assistant Manager of the Mortgage Department of the Guardian Company, for the years 1939 and 1940, and by John Warren, as agent or attorney of said taxpayer for the year 1941, and by Aaron Gorlin, agent for the taxpayer, for the year 1942, instead of by an officer of said taxpayer

corporation. After argument on this motion, and at the same meeting, Commissioner Sharp, seconded by Commissioner Smith, moved that the motion of Jersey City to dismiss all the original Guardian petitions for the years 1939 to 1942, inclusive, be granted, which motion was defeated, the vote thereon being: Commissioners Huegel, Smith and Sharp "aye," and Commissioners Harrigan, Hoff, Kreamer and Waesche "no." Later on the same day, Commissioner Kreamer moved that the motion of Jersey City to dismiss these original Guardian petitions be denied, which motion was adopted, the vote being: Commissioners Harrigan, Kreamer, Hoff and Waesche "aye," and Commissioners Huegel, Smith and Sharp "no." Argument was then heard at the same meeting on the second motion of Jersey City to dismiss the amended appeals, and thereafter, at the same meeting, a motion was adopted denying this motion of Jersey City, all members voting in favor of denying said motion of Jersey City except Commissioner Sharp, who voted "no." Counsel for Jersey City then moved for an order of the State Board to dismiss all the Guardian appeals on the ground that the State Board had no jurisdiction because the County Board of Taxation had no jurisdiction, and requested an adjournment to February 15, 1944, to argue that motion, and it was thereupon moved by Commissioner Sharp, seconded by Commissioner Harrigan, that Jersey City's request for such adjournment be granted, and the vote on that motion was: Commissioners Huegel, Harrigan, Sharp, Hoff, "aye," and Commissioner Kreamer and President Waesche "no" (Commissioner Smith then being absent, having left the meeting). Counsel for Jersey City and Mr. Warren appeared at the State Board meeting in Trenton on February 15, 1944, and argument continued all day. Counsel for Jersey City asked the State Board to reopen the argument on the motions of Jersey City which the State Board had denied at its meeting of January 25, 1944. The Board voted to go into executive session on the votes of Commissioners Huegel, Harrigan, Hoff, Sharp and Smith, Commissioner Kreamer and President Waesche voting "no." Commissioner Kreamer was obliged to leave the meeting in the afternoon and thereupon Commissioner Smith, seconded by Commissioner Sharp, moved that no further action be taken in the matter at that time because of the absence of Commissioner Kreamer, which motion was adopted, and the further hearing of the matter was continued to February 29, 1944, at Trenton. At this meeting, Commissioner Smith, seconded by Commissioner Huegel, moved that the State Board reserve decision on the motion of Jersey City to reopen the State Board decision dismissing the Jersey City motion for an order of the State Board to dismiss the Guardian appeals, on the ground that the petitions of appeal had not been properly signed, and that each side be given two weeks to file briefs with the State Board on said motion to reopen the State Board's action of January 25, 1944, which motion was adopted, Commissioners Harrigan, Huegel, Hoff, Sharp and Smith voting "aye," and Commissioner Kreamer and President Waesche voting "no."

There was no further action in this matter until April 3, 1944, when Mr. Warren wrote a letter to the State Board asking for a decision of the State Board as to whether or not it would reopen its decision of January 25, 1944, denying the motion of Jersey City to dismiss the original Guardian appeals and the amended Guardian petitions of appeal, to which Mr. Cook, the Secretary of the State Board, replied by letter dated April 4, 1944, stating that Mr. Warren was to file a brief with the State Board, to which Mr. Warren

replied by letter of April 5, 1944, that he did not intend to file any brief and that there was nothing in the brief of the Counsel of Jersey City that required any answer. These letters were presented to the State Board at its meeting of April 11, 1944. Commissioner Huegel, seconded by Commissioner Sharp, moved that the matter be laid over for a period of two weeks, which motion was adopted, Commissioners Harrigan, Huegel, Hoff, Sharp and Smith voting "aye," and Commissioner Kreamer and President Waesche voting "no." President Waesche stated before the adoption of this motion that it was inexcusable for any further delay in this matter. Commissioner Huegel stated that he desired this two weeks' delay because he was obtaining information from his personal counsel in regard to the matter.

At the State Board meeting in Trenton of April 25, 1944, Commissioner Huegel stated that he was not ready to vote upon the Guardian matter that day for the reason that he had not had time to go into it thoroughly during the past two weeks due to personal matters. On motion of Commissioner Smith, seconded by Commissioner Harrigan, the matter was laid over to May 9, 1944—the vote on the motion being: Commissioners Harrigan, Huegel, Sharp and Smith "aye"—Commissioner Kreamer and President Waesche "no." President Waesche stated that it was inexcusable and absolutely an arbitrary act on the part of the State Board, and not a reasonable exercise of discretion, since there is no reason given for the motion.

At the State Board meeting May 9, 1944, Commissioner Huegel moved, seconded by Commissioner Smith, that the motion of Jersey City that the State Board reopen the argument on the dismissal of Jersey City's motion to dismiss the Guardian appeals (which motion of Jersey City had previously been denied by the State Board on January 25, 1944) be granted, which motion was adopted, the vote thereon being: Commissioners Harrigan, Huegel, Hoff, Sharp and Smith "aye," Commissioner Kreamer and President Waesche "no." Commissioner Huegel stated he had an opinion to read in reference to this matter which had been furnished to him by his personal counsel, which he proceeded to read and which opinion set forth that a court may, at its discretion, hear a renewal motion or amend, modify or vacate its orders, etc.

At its meeting of May 15, 1944, the State Board fixed June 6, 1944, at Trenton, for the hearing of argument on the motion of Jersey City to dismiss the Guardian appeals—1939 to 1942, inclusive.

At the State Board meeting of June 6, 1944, the hearing on the motion by Jersey City to dismiss the Guardian appeals was adjourned to June 13, 1944, on motion of Commissioner Sharp, seconded by Commissioner Smith, the vote thereon being: Commissioners Harrigan, Huegel, Hoff, Sharp and Smith "aye," Commissioner Kreamer "no" (President Waesche being absent). It was then moved by Commissioner Sharp, seconded by Commissioner Harrigan, that argument for the reopening of the second motion of Jersey City and argument on the third motion be fixed for June 13, 1944, at Trenton, which motion was adopted, Commissioners Harrigan, Huegel, Hoff, Sharp and Smith voting "aye," and Kreamer "no" (President Waesche being absent).

At its meeting of January 25, 1944, the State Board had denied two motions of Jersey City, the first to dismiss the original appeals because they had not been executed by an officer of the corporation, and the second to dismiss the amended appeals. As the matter stood after the June 6, 1944,

meeting, the Board had agreed to listen to argument to reopen both of these Jersey City motions and also to hear argument on the third motion (the third motion not yet having been argued). At the State Board meeting of June 13, 1944, Counsel for Jersey City withdrew its third motion, namely, the motion requesting the State Board to dismiss the Guardian appeals because the County Board lacked jurisdiction. Jersey City Counsel made this withdrawal conditional upon the City not being prejudiced thereby. Mr. Warren objected to the condition. It was moved by Commissioner Sharp, seconded by Commissioner Smith, that Jersey City be permitted to withdraw the third motion without prejudice, which motion was adopted by Commissioners Harrigan, Huegel, Hoff, Sharp and Smith voting "aye," and Commissioner Kreamer and President Waesche voting "no." A motion followed concerning admission of evidence offered by Jersey City to which Mr. Warren objected, whereupon a motion was adopted accepting such evidence, the vote being: Commissioners Harrigan, Huegel, Hoff, Sharp and Smith "aye," Commissioner Kreamer and President Waesche "no." A motion to strike from the record made by Mr. Warren was denied, the vote being: Commissioners Harrigan, Huegel, Hoff, Sharp and Smith "aye," Commissioner Kreamer and President Waesche "no." Commissioner Smith then read a statement addressed to the State Board and moved that decision be reserved on all matters pending before the State Board until the hearing on all factual matters had been completed, and that the entire State Board hear the valuations of both sides as to the true value of these properties, and that a date be set for the hearing, which motion was seconded by Commissioner Huegel and adopted by the votes of Commissioners Harrigan, Huegel, Hoff, Sharp and Smith, who voted "aye"—Commissioner Kreamer and President Waesche voting "no." In the afternoon it was moved by Commissioner Huegel, seconded by Commissioner Smith, that the entire State Board hear the Guardian appeals on Monday, June 26, 1944, at Jersey City, and that the hearings continue from day to day until completed, and all other cases listed for hearing on and after that date be adjourned until the Guardian cases had been completed. This motion was adopted, Commissioners Harrigan, Huegel, Hoff, Sharp and Smith voting "aye," and Commissioner Kreamer and President Waesche voting "no." Commissioner Smith's said statement reviewed the proceedings in the Guardian matter, and set forth that his reason for making it was that Mr. Warren has continued to charge that the Board has been lax in its duties in not summarily hearing these appeals. "This I resent and I think, all of the various amendments to the petitions, the proceedings before the Supreme Court and the Court of Errors and Appeals, as well as other motions made by both sides, that the Board has been endeavoring, to the best of its ability, to place these matters on the calendar for a complete hearing as to the facts in these cases." He refers to Rule 9 of the old Board rules of 1938 permitting the Board to reserve decision on a motion and in its discretion proceed with a hearing of the appeal on the merits before finally deciding on the motion, and points out that the Board rules of 1943 contain no such provision but that notwithstanding such omission he thinks the 1938 procedure would not be inconsistent with the 1943 rules—and suggests that if that procedure is followed "it might come to pass that the parties would arrive at some amicable conclusion satisfactory to the Board."

On June 22, 1944, Mr. Warren applied to the Chief Justice for a writ of certiorari and a writ of mandamus to compel the State Board to first decide the motions before proceeding with the hearing on the merits, which applications were denied, with leave to renew the applications later.

The entire Board held a hearing consuming the entire day at Jersey City on June 26, 1944, on the Guardian appeals. Mr. Warren insisted that the State Board finally decide the pending Jersey City motions concerning the dismissal of the petitions of appeal before proceeding with the hearing on the valuations, and much of the day was spent in discussions between the members. President Waesche read a letter in which he reviewed these proceedings and delays in great detail, part of which is as follows:

"This Board has entered judgments on Guardian Life petitions of appeal signed and verified in some cases by John Warren as agent, in other cases by Aaron Gorlin as agent, and, as previously mentioned, by Burlye B. Pouncey as Assistant Manager of appellant's mortgage department. These appeals were heard and reported to the Board by Commissioners Sharp and Hoff. Commissioners Huegel, Hoff, Smith, Harrigan and Sharp concurred in the judgments. I have been informed by the Secretary of the Board that in the past many appeals were accepted by the Board that were not signed or verified on behalf of the corporation appellant by anybody. The Board permitted such petitions to be signed after they were filed. I have also been advised by the Secretary of the Board that hundreds or even thousands of appeals have been filed during the past years by corporations where the petitions of appeal were not signed and verified by an officer of the corporation. It is my understanding that Board has never before been technical with reference to the form of appeals. If there is to be a change in that practice, then it should be done only after notice to all parties litigant and until such time after there has been such notification we should be very liberal in permitting amendments to cure any technical difficulties that may have arisen by reason of the previous practice of this Board. I have been unable to find where any question has ever been raised before with regard to the validity of these petitions of appeal.

"There are many things in connection with these appeals that I might refer to in this memorandum but the most important aspect of the case is, no matter how we may seek to justify it, we cannot convincingly justify the delays in bringing this matter to an issue. The Board has been dilatory in not taking final and conclusive action on these motions and upon the appeals themselves. On several occasions, I have placed myself on record to this effect. I believe that these appeals once having been referred to Commissioner Kreamer, the Board has without justification committed an unwarranted affront toward Commissioner Kreamer. But aside from that it is quite obvious that unless the Board shall change its views on this matter there will be an unjustifiable delay in the hearing of the 1944 railroad tax appeals, as well as other appeals which should be decided by the Board without undue delay.

"On the question of practice it does seem clear that these motions should be disposed of before any hearings should be had on the property values. It is obvious that if Jersey City's motions are granted that no hearings will be necessary. To hold such hearings and then determine that the motion should be granted will do a grave injustice to the State of New Jersey, to Jersey City and to the taxpayer. It is my judgment that this Board should

immediately dispose of the motion of Jersey City and if it should be determined that the appeals shall not be dismissed, then the appeals should again be referred to Commissioner Kreamer for the purpose of hearing and reporting.

"In the alternative, I respectfully request that this Board take appropriate action to permit me to withdraw from the case for the purpose of continuing with the railroad tax appeals. As you are well aware, in 1942 and 1943 it was necessary to dismiss certain railroad tax appeals because it was physically impossible to complete them within the statutory period. For the first time since I have been on the Board it has become possible for such appeals to be completed within time. It does seem a shame that this very needed result should be jeopardized by departing from this former practice of having property tax appeals heard by a single member of the Board and reporting to the Board for final action."

Following the reading of this letter, Commissioner Kreamer stated that he agreed generally with President Waesche's statement and that he felt that the action of the State Board on June 13, 1944, in assigning the Guardian hearings to the entire Board, was an unwarranted affront to him.

"If there was no ulterior motive for the Board's action, then the only motive I can see is that the Board feels that I am not capable of handling these cases intelligently and without delay . . . I don't see any good of the entire Board's hearing these cases. They should be referred to a single commissioner . . . if a single commissioner heard these Guardian cases, then you (President Waesche) could continue with your railroad cases and the five members of the Board could handle, in the course of a month, a couple of thousand cases of appeals by taxpayers. I further feel that it will be practically impossible to intelligently handle the cases without first disposing of the motions before the Board, both the question of jurisdiction . . . and the amendments."

President Waesche was relieved from further attendance after that day at the Guardian hearings so he might hear railroad cases. Commissioner Kreamer further remarked at this point: "I am not withdrawing from the position that one member of the Board is enough to hear these particular cases but I think we are in some chaotic situations here and I think if you are relieved so that at least the railroad appeals can be heard during the year, within the statutory time limit, some semblance of order will come out of the situation as it at present exists." Very little testimony was taken, and later in the day Mr. Warren filed a challenge asking that Commissioners David R. Smith, J. William Huegel, Richard J. Harrigan, Thelma Parkinson Sharp and Joseph S. Hoff, disqualify themselves and charging that they were biased and prejudiced against him and his clients.

The hearings continued at Jersey City on June 28, June 29 and July 6, 1944, attended by the entire board, except President Waesche on June 28th and 29th, and Commissioner Kreamer on July 6th. Some testimony was taken but little progress was made and there was much argument of Counsel and discussions between members. On July 10, 1944, the four members decided not to proceed with the hearings of the Guardian cases in view of the charges made against them—and since that time, and until the completion of the hearings in this investigation, no further action has been taken by the State Board with reference to the Guardian appeals.

The total of the City assessments against the 16 parcels of real estate covered by the Guardian appeals was over \$4,000,000.00, but these 16 properties were the subject of 52 appeals because there were appeals on the same properties for 1939, 1940, 1941 and 1942. The grand total of the City assessments against these properties for all the years covered by these appeals was \$14,000,000.00; so that the amount of the taxes upon such assessments would be over \$700,000.00. A very substantial part of the \$700,000.00 was therefore involved in these appeals. If the motion of Jersey City to dismiss the original petitions of appeal had been granted by the State Board at its meeting of January 25, 1944, in favor of which Commissioners Huegel, Sharp and Smith had voted, all of these 52 appeals, covering the four-year period, would have been thrown out, and the amended appeals would have fallen with them, and the only recourse that would have left to the Guardian would have been to appeal to the Supreme Court to review the State Board's action. This motion and this result failed by one vote, receiving only the three affirmative votes aforementioned; in voting with Commissioner Kreamer and President Waesche in opposing that motion, and also in denying Jersey City's motion to dismiss these appeals, Commissioners Harrigan and Hoff helped to prevent that result. Thereafter, however, in the votes on all the important motions and proceedings in the Guardian matter, after said January 25th meeting, Commissioners Harrigan and Hoff joined with Commissioners Sharp, Huegel and Smith throughout. Commissioner Kreamer and President Waesche, the legal members of the State Board, voted together on all these legal questions, motions, and proceedings, of any moment, in the Guardian matter from the beginning to the end.

Rule IX of the State Board Rules of May 17, 1943, provides that appeals may be referred by the State Board to one or more of its members at any designated place for the purpose of conducting the hearing and reporting to the State Board for its action (R. S. 54:2-18 also so provides). Rule XI of the same Rules provides: "Motions shall be returnable on any Tuesday . . . when the Board is in session in Trenton, or in cases which have been referred to one or more of its members, in accordance with Rule IX, may be heard by such member or members at the place of hearing other than Trenton." In this case the State Board had on December 7, 1943, referred the Guardian appeals to Commissioner Kreamer to be heard at Jersey City starting January 6, 1944.

Rule XVIII of the same Rules reads: "The Board reserves the right to amend, relax and dispense with these rules from time to time as circumstances may require or render necessary or expedient." Mr. Cook testified that this Rule XVIII has been in force for over 19 years.

Rule V of the same Rules (formerly Rule 9A) has been in effect since 1936 or 1937—it relates to the execution of petitions of appeal: "Such appeals shall be instituted by a petition and where instituted by the taxpayer shall be verified by oath. In case the petitioner is unable to sign and verify the petition by reason of illness, incapacity or absence from the State, or for any other reasonable cause, it may be signed and verified by his duly authorized agent, who shall attach his affidavit specifying that he is authorized to take the appeal and giving the reasons for the inability or failure of the petitioner to sign and verify the petition. Petitions of appeal of corporations and associations shall be signed and verified by an officer thereof."

The last paragraph in this Rule V reads as follows: "The petition, or its endorsement, shall further set forth the name and address of appellant and of respondent, and the name and address of appellant's agent or attorney, **where the appeal is instituted through an agent or attorney, for the purpose of service of papers in connection with the appeal. Where appellant appears pro se** his address shall appear, etc."

Attached to each of the original and amended Guardian petitions of appeal is an affidavit of the attorney or agent who so executed, which complies with the requirements of this Rule V, and no question has ever been raised by Jersey City, or the State Board, as to any such affidavit, and it has been the practice of the State Board to interpret and read this rule as a whole and to so apply it to corporate as well as individual taxpayers and to permit the institution of corporate appeals through an agent, or attorney. The fact that such affidavits of agents or attorneys signing petitions had been uniformly and generally accepted by the State Board for years in the case of corporate petitions, shows that the State Board had interpreted and applied this provision of this Rule as a whole and to corporate petitions in the same manner as to petitions of individuals, otherwise there would have been no reason for affidavits of agents or attorneys on corporate petitions if only an officer could sign them. Mr. Cook testified that for several years past it has been the practice of the State Board and of himself, as Secretary, to interpret Rule V in the light of Rule XVIII for the purpose, in all instances, so far as the State Board is concerned, to give a taxpayer, who thinks he has a complaint, a proper opportunity to present his appeal regardless of technicalities. He further testified that Rule V (originally 9A) was adopted in 1936 or 1937 to prevent unauthorized, irresponsible persons from making a racket of filing appeals due to a situation which had then developed in Union City or West New York. He further testified that there had never been any question about the authority or the responsibility of the agents or attorneys who had executed the Guardian petitions until raised by Jersey City in the 1944 motions; that for several years the State Board has had no hearings on that question and that he and Miss Mason pass on it when the petitions are filed; that where agents or attorneys are known or practice before the State Board petitions signed by them are accepted and filed generally; and that there was never any such doubt or question as to the Guardian appeals. State Board judgments have been entered in Guardian appeals for prior years as well as in West New York appeals for 1941 and 1942 where the petitions had been executed in the same manner. Mr. Cook further testified that he knew of no other case where a municipality had objected on the ground that a petition of appeal of a corporation must be signed by an officer thereof and that Jersey City had not made any such objection as to the petitions of any other corporate taxpayer; that even since the Jersey City motions have been pending (since January 6, 1944) the State Board has continued to file corporate petitions so signed by agents and attorneys; that for years thousands of corporate petitions so signed have been accepted and filed by the State Board and judgments entered thereon. President Waesche testified that every matter contained in the letter which he read to the State Board at Jersey City on June 26, 1944, had previously been discussed, and talked about between him and the members of the State Board—and that he wrote the letter for the record. In speaking of what lead up to his differences with the members of the

State Board (other than Commissioner Kreamer) President Waesche testified: "and then this year came up the Guardian cases and our discussions over these motions at the Board meetings, comments made with regard to Mr. Warren and general discussions, that no longer was there any doubt in my mind about the invisible control of the board."

Commissioner Kreamer testified that he was thoroughly familiar with the Guardian petitions and amended petitions and had carefully examined all of them; that he knew of cases where the State Board heard questions of jurisdiction but that he knew of no case where the entire State Board heard the case on the merits; that every Guardian appeal has the same legal question—which is upon the amendments—but that there is no legal question on the original petitions of appeal. Commissioner Kreamer, in referring to the legal question as to the amendments, was not questioning the right of Guardian to file the amendments or the amended appeals, because he, sitting as a hearing Commissioner, in these cases at Jersey City on January 6, 1944, had permitted the Guardian to make such amendments and had then granted Mr. Warren's motion to file the amended appeals, and said amended appeals were then and there filed, and throughout the entire proceedings Commissioner Kreamer had upheld the right of Guardian to file amended appeals and had voted at the meeting of January 25, 1944, to deny Jersey City's motion to dissmis the amended appeals. At the same January 25th meeting, he was joined with President Waesche and Commissioners Harrigan and Hoff against the Jersey City motion to dismiss the original petitions and to deny such motion against the opposition of Commissioners Huegel, Sharp and Smith, in each instance. (Jersey City filed cross-petitions with the State Board in all the Guardian appeals.)

Rule XVII of these same Rules reads as follows: "Except as herein otherwise provided, the practice and procedure before the Board shall conform to that prevailing in **the courts of law of this State, but the Board reserves the right to make the proceedings and hearings thereunder as informal as possible, to the end that substance and not form shall govern, and that a final determination of all matters before it may be promptly reached.**"

The 1939 and 1940 Guardian appeals could have been tried at any time between January 8, 1942, and July, 1943, if the State Board had followed the same course as it followed, during that period, with respect to appeals of other taxpayers who then had applications to amend their petitions pending before the State Board but whose cases were heard on the merits and entry of judgments withheld and decision on the amendments reserved pending the Court of Errors and Appeals decision on the question of amendments. The State Board followed this course as to such other taxpayers only because the same issue was involved in the Guardian litigation and to avoid delay in hearing appeals. If the Court of Errors and Appeals' decision had been the other way, these other taxpayers whose appeals had been heard would have been in no different position than Guardian. There was no question involved in the litigation other than that of the right to amend the petition. No such questions as Jersey City raised in its motions that occupied the attention of the State Board between January 6 and July 6, 1944, were raised or involved in that litigation. The fact that the Guardian cases were being litigated on the question of the right to amend did not put the Guardian appeals in any different category than those of

other taxpayers who then had applications to amend pending before the State Board. If the State Board had so acted judgments in all the 1939, 1940, 1941 and 1942 appeals could have been entered in November, 1943; in denying Mr. Warren's requests for a listing of these cases in that period and in taking no action thereon, it is explained that the State Board felt that hearings on all Guardian appeals on properties located in Jersey City should be held up until the Court of Errors and Appeals had spoken because of the fact that the Guardian was a party to the litigation (even though not the moving party), and that after such decision, if adverse to Jersey City, the appeals on all the properties for all the years could be tried together. Such explanation seems to indicate a failure or inability on the part of the lay members to comprehend the legal situation involved.

After the Court of Errors and Appeals decision of July, 1943, the State Board could have, on September 7, 1943, set dates for the immediate hearing of the Guardian appeals instead of waiting to December 7, 1943, to set January 6, 1944, as the hearing date, though this particular two months' delay was comparatively not of serious moment.

Secretary Cook testified that the State Board Resolution of January 8, 1940, was passed for the particular benefit of the City of Newark for the reason that that City had in the previous year made substantial cuts in assessments and by reason thereof many taxpayers who had appeals pending for 1938 and 1939 with the State Board wanted to amend them by asking for larger reductions, and that this Resolution, plus the then practice of the State Board thereon of denying applications to amend if opposed by the municipality, would stop these Newark taxpayers and prevent them from getting reductions larger than the original petitions sought. This was the situation applied to the Guardian in its first step before the State Board on April 15, 1941, when it first sought to amend some of its 1939 and 1940 appeals.

If the entire State Board (other than President Waesche after he had been excused) had continued these Jersey City hearings on the merits of these 52 appeals to conclusion, reserving decision in the meantime on the reopening motions, as ordered by the five lay members, and if, after the conclusion of the hearings, the State Board should decide to reverse its previous vote and to dismiss the original petitions, the time of the State Board members, Counsel of the Guardian, Counsel and other officials of Jersey City, members of the staff of the State Board, witnesses, stenographers and others, as well as the expenses of the hearings, including stenographer's fees and for transcripts of testimony, would have been wasted. This was obvious; no litigation pending and there appears to be no reason or explanation for the failure to decide these simple motions promptly or for this unusual and extraordinary procedure.

The five lay members testified that under the circumstances in the Guardian cases, they felt that they had done their duty, that the course they had followed was, in their opinion, necessary and proper, that they did not feel that they were responsible for the delays, but that that was caused by the Counsel for Guardian and the Counsel for Jersey City because of the amendments, motions and arguments; that they had no prejudice against Mr. Warren or his client and had not favored Jersey City in this or any other matter and that they had no such thought or intention, and that no one, in behalf of Jersey City, had ever sought to influence

them in any manner in this or in any matter—and that they felt that their course would really expedite the disposition of the Guardian cases—and that President Waesche's suspicions as to invisible control were without any foundation and that he has furnished no proof of this suspicion or of any other of the suspicions he had expressed.

I find that there was no justification, in the rules of the State Board or in the facts or otherwise, for the votes of Commissioners Huegel, Sharp and Smith (on January 25, 1944) in favor of granting the motion of Jersey City to dismiss the original petitions of appeal, or for their votes, on that day, in opposition to the denial of said motion; or in the vote of Commissioner Sharp, at the same meeting, in opposition to the denial of the motion of Jersey City to dismiss the amended petitions—or for the aforementioned votes and actions of Commissioners Harrigan, Hoff, Huegel, Sharp and Smith at meetings subsequent to January 25, 1944, in connection with the reopening motions, the reserving and withholding of decision thereon, the hearing of the appeals on the merits before deciding said motions, the taking of the hearing out of Commissioner Kreamer's hands after same had been referred to him, the hearing of the merits by the entire State Board and in connection with the many months of delay caused thereby.

The confusion of the lay members over legal questions raised may partly explain some of their actions and the almost chaotic conditions, at times, in this five year old case, but it can hardly explain all of such actions or conditions, and it does not explain the votes of Commissioners Huegel, Sharp and Smith, on January 25, 1944, to summarily and conclusively dismiss all of these appeals.

This report does not include any action taken by the State Board after the close of my hearings (after December, 1944).

Full Records of State Board Proceedings.

3. R. S. 54:2-14 provides "The board shall keep a full record of its proceedings."

The record of its proceedings which the State Board keeps is not a "full" record. R. S. 54:2-18 provides that the board may, as occasion shall so require, by order, refer to one or more of its members the **duty of taking testimony** in a matter pending before it, and **report thereon** to the board, but no determination shall be made therein **except by the board**—and that stenographic notes shall be made of all testimony so taken, but the members of the board shall be qualified to make their determination **after receiving the report** of the member hearing the testimony, and without the necessity that the stenographic notes so taken shall have been reduced to writing, but such testimony shall be reduced to writing upon the request of any member of the board. Due to the large number of cases heard it would cause considerable delay in entering judgments and a prohibitive cost to write up the stenographic testimony taken at all these hearings, so that, as a practical matter, and as a general rule, the other members, in voting upon Judgments, must rely upon the reports made by the hearing member. **That report of the hearing member is not a report on the testimony taken at the hearing**, but is merely a report of the hearing member's decision—and includes only the names of the taxpayer and municipality; the location of the property; the amount of the assessment

appealed from and the amount of the assessment as decreased or increased by his decision, and, in cases where the parties have consented to the judgment, the fact that it is a consent judgment. The provision in the Statute that stenographic notes of the hearing testimony shall be taken but need not be written up unless so requested by a board member does not, in my opinion, relieve the hearing member from the obligation to report to the board on the testimony. These cases are heard by a single board member and hundreds of these hearing decisions are reported to the State Board at one meeting. The Minutes of the State Board meeting containing these reports are typewritten and mailed or given to the members and at a subsequent board meeting, two weeks hence, the reports are approved and such decisions of the hearing members become judgments of the State Board. Later, usually a year, or nearly a year later, other minutes are written up which are minutes of the hearing—these other minutes contain nothing more than the State Board minutes except the names of the attorneys and of the experts who appeared and testified at the hearing. Both the State Board minutes and the Hearing minutes are prepared from the hearing Clerk's calendars.

At each hearing the hearing board member and his clerk have a calendar (which are the same) upon which appears the appeal number, the names of the taxpayer and the municipality, and the amount of the assessment appealed from—it appears that few, if any, of these clerks make complete notes on their calendars as to the nature of the property, description of the buildings, size of the lots, or as to the hearing testimony, that some such clerks make very incomplete records thereon, and some little or nothing beyond the names of the attorneys and experts. From the testimony some of these clerks note thereon only what they chose. And it seems that the hearing board members rely very little, and some not at all, upon the Clerk's calendars for any purpose. When ready to report to the State Board the hearing member writes or dictates to be written, on the Clerk's calendar, the figures representing his decisions. The hearing board member keeps his own calendar—he does not file it with the Board—and it does not become a board record—he treats and regards it as his own private record; and Commissioners Huegel, Harrigan, Smith and Sharp testified that after reporting to the Board, or some time later, they destroyed their hearing calendars. The Docket cards—the State Board Minutes and the Hearing minutes are written up from the Clerk's calendars—and thereafter, the Clerk's calendars are stored in bulk in a vault—and are no longer used for reference or for any purpose, and the Secretary has testified that there is no reason for keeping them and they should have been destroyed. Prior to this investigation it appears that these Clerk's calendars were not regarded as permanent or public records of the State Board and were not so treated.

There is nowhere of record in the State Board's office any description of any building which is the subject of appeal (other than a mere general statement such as store, dwelling house, apartment house or factory which appears only on the appeal petition which is not practicable or convenient for permanent reference) and nothing as to the size of the lot, other than what might appear casually, indifferently and, usually incompletely, as to some properties, on the calendars of some of the clerks which are not filed or kept so that they could be used conveniently for reference. The docket

cards, which, with the minutes, are the permanent reference records of the State Board, contain only the appeal number, the names of the parties, the address of the property, the previous (County Board Judgment) assessment, the State Board Judgment amount, the date and place of the hearing, the name of the hearing Commissioner and whether a consent. The hearing member learns of the nature of the property, description of the building, the size of the lot and the unit foot value of the lot, only after he has begun the hearing, and even then he may not learn this, if the parties consent to the entry of a judgment which, from the testimony in this investigation, would be in about 75% of the cases, or, in any event, in a very large percentage thereof.

The form of petition of appeal filed with the State Board does not provide any details or information other than a mere general reference to the property as aforesaid, the names of the taxpayer and municipality, the location of the property, the amount of the original City assessment, the amount of the County Board judgment and the amount of the assessment reduction petitioned for. This lack of full records of the State Board is in marked contrast to the full records of the Hudson County Board of Taxation concerning which the President of that Board testified in the investigation. (And I am informed that the Essex County Board of Taxation likewise has full records.) In the County Board situation appeals are likewise assigned to, and heard by, individual Commissioners, but the hearing Commissioner's record of the testimony of the hearing is very complete as to all essential particulars, including the size of the lot, etc., and made on a printed form which covers all details, and that record is and becomes part of the County Board's permanent records and a public record, and is filed in such a manner as to be convenient for ready reference to every member of the Board—during the current year as well as in subsequent years. Such a record seems indispensable and of great value in connection with subsequent appeals on the same property and in connection with appeals of the same year or subsequent years on property that is similar or contiguous or in the same block and for other obvious purposes. Such a record informs a hearing Commissioner of his own decisions and of the decisions of the other hearing Commissioners on the same property in previous years and of decisions of other Commissioners on properties in the same block or contiguous or alike during the same year; and it will likewise inform the nonhearing members who must vote on the judgments. No such record is now available to any State Board member.

This lack of full records of the proceedings of the State Board is a handicap not only to the member who hears an appeal but also to the members who do not hear the appeal and lessens their ability to fully perform the duties imposed upon them by law and to render the best service possible.

This lack of full records which is occasioned by the incompleteness of the Clerk's calendars, the almost naked form of the petition of appeal, the use and retention by the hearing members of their hearing calendars as their private record, the failure to report to the State Board on the hearing testimony, is a practice of many years standing, antedating the membership of any of the present State Board members.

In 1938 Assemblyman Paul of Essex County, at the request of the Essex County Board of Taxation, introduced Assembly Bill 218 requiring the State

Board to send to the County Board of Taxation copies of the judgments of the Board at the same time that they were sent to the Collector of a municipality. The minutes show that the State Board objected to this bill and made that objection known to Assemblyman Paul and requested a hearing thereon and the bill failed of passage. (Commissioner Huegel at that time was president of the Essex County Board of Taxation.) Subsequently thereto the Secretary (Cook), with the knowledge of the State Board, began sending, and has since continued to send, copies of the State Board judgment (in Jersey City appeals) to the Assessor of that city, and to the Assessor of the City of Trenton (in Trenton appeals), in addition to the copies of the judgments sent to the collectors of those cities, these being the only municipalities receiving such additional copies of judgments. It was freely admitted by the State Board members and Secretary Cook that it would be very helpful to the County Boards to get copies of these judgments at the same time that they are sent out to the taxpayers and the collectors of the municipalities; that it was necessary for the County Boards to receive same as quickly as possible and that this change in procedure would not cause increased personnel or expense to the State Board since it would mean making out only an additional carbon copy for the County Boards and do away with the necessity of sending the calendar letters which now go at later and less frequent times to the County Boards.

On September 14, 1944, Secretary Cook testified that the last calendars on State Board reductions sent to the Hudson County Tax Board was in December, 1943; that December 1st was the deadline last year; that the February 1, 1944, State Board decisions were sent to the County Boards, including Hudson County.

The State Board minutes concerning judgments based upon reports of hearing members read as follows: "The recommendations of Commissioners . . . and . . . were adopted as the action of the Board (in the foregoing cases) after a **review and consideration of the testimony taken at the hearing**, and judgments were entered accordingly." This action of the State Board seems to be a recognition on its part of what appears to be the statutory obligation of the hearing member to report to the State Board **on the hearing testimony**, and of the obligation of the State Board to receive such report before entering Judgment. No such report is made to, or received by, the State Board, in any form, or at any time, in the ordinary real estate cases (which probably constitute over 90% of the State Board's business), and the said statement in the minutes is therefore not based upon fact.

Meetings—Appeals Filed, Heard and Pending.

4. The Meetings of the State Board are held in Trenton, and the number of State Board meetings held are as follows:

During 1939—28 meetings
 During 1940—23 meetings
 During 1941—23 meetings
 During 1942—33 meetings
 During 1943—25 meetings

The total number of appeals filed with the State Board from the entire State is as follows:

In 1941—20,823 appeals
 In 1942—24,257 appeals
 In 1943—52,302 appeals
 In 1944—39,161 appeals

Of the above State totals, the following number of appeals were filed from Essex and Hudson Counties:

Year	Number from Essex	Number from Hudson
1941	6,655	11,208
1942	3,657	18,866
1943	3,184	47,496
1944	2,030	36,390

Of the above County totals, the following number of appeals were filed by the municipalities of Newark, Jersey City and Hoboken:

Year	By Newark	By Jersey City	By Hoboken
1941	307	612	176
1942	179	9,700	661
1943	325	40,000*	3,605
1944	307	28,000	4,283

It would appear from the testimony that, throughout the entire calendar year, the members of the State Board devote a little more than one-half of their time (usual working time) to their duties as such members.

From the testimony it appears that each member of the Board (except President Waesche) holds hearings on an average of usually two days a week except during the mid-summer; that each of these hearings averages about a half day; that they attend meetings of the State Board in Trenton on one day every two weeks—and that they spend considerable time at home or at their offices in preparation for the hearings and particularly in considering testimony taken at hearings and in reaching decisions. The following shows (1) the number of appeals heard and determined, and (2) the number of hearings held—in the years 1939-1943 (inclusive) to be as follows:

	Number of Appeals Heard and Determined	Number of Hearings Held	Average Number of Appeals Heard and Determined per Hearing
In 1939	20,668	402	51
In 1940	22,712	428	53
In 1941	19,719	373	53
In 1942	13,731	318	43
In 1943	13,548	391	35

* Jersey City in 1944 withdrew 10,000 of these 1943 appeals.

Based upon the figures in the foregoing table, the average yearly number of cases heard by **each** of the six members, the average yearly number of hearings held by **each** of them, and the average yearly number of cases heard per hearing by each of them would be as follows:

	Average Number of Cases Heard per Member	Average Number of Hearings per Member	Average Number of Cases per Hearing per Member
In 1939	3,445	67	51
In 1940	3,785	71	53
In 1941	3,287	62	53
In 1942	2,289	53	43
In 1943	2,258	65	35

The number of appeals pending before the State Board (remaining to be heard) on the following dates were as follows:

On January 1, 1942—24,036
 On January 1, 1943—33,952
 On January 1, 1944—68,587*
 On January 1, 1945—76,275**

The number of Judgments entered by the State Board (on reports of the hearing members) at one time, at one meeting, is very large and it would be impossible for the members who had not heard or investigated these cases to have any knowledge of them.

The information contained in the minutes of the State Board's meetings (which is the only information a member gets) gives him nothing more than the names of the parties, the location of the properties, the amount assessed and the amount reduced to. Only two weeks elapse from the time the reports are received by the State Board until the judgments are entered. So that in approving the entry of judgments six of the members are obliged to do so blindly in reliance upon the member who heard the cases. The practical result of this practice and condition is that one commissioner is really deciding the cases.

In 1942 an average of 418 judgments **per meeting** were entered. And at one of those meetings 1,240 were entered.

In 1943 an average of 557 judgments **per meeting** were entered. At one of those meetings 1,080 were entered—at another 1,229 were entered—at another 1,159 were entered, and at another 1,089 were entered.

In 1944 (to August 1st) an average of 417 judgments **per meeting** were entered. At one of those meetings 1,225 were entered, and at another 1,477 were entered.

It appears from the testimony that about 75% of the above appeals are not actually tried or contested due mainly to consents or settlements of the parties, in which cases no testimony is taken. This would indicate

* This includes 40,000 appeals for 1943 filed by Jersey City and 3,605 appeals for 1943 filed by Hoboken.

** This includes 30,000 remaining 1943 Jersey City appeals and 28,000 Jersey City appeals for 1944—and also 3,605 Hoboken 1943 appeals and 4,283 Hoboken 1944 appeals.

that only about 25% of the above appeals were actually heard and tried on which testimony was taken; however, Commissioner Kreamer made an analysis of 5,000 appeals for the year 1943 as follows:

209 appeals or 4% Dismissed for lack of prosecution,
 600 appeals or 12% Withdrawn
 2,000 appeals or 40% Judgments entered by consent
 2,200 appeals or 44% contested and tried
 5,009 appeals or 100%—Totals
 Total Reductions in Assessments Granted—\$12,341,600.00
 Total Increases in Assessments Imposed — 2,331,000.00

Of the Total Reductions Granted

\$8,662,600.00 granted after hearings
 \$3,679,000.00 granted by consents.

This analysis is based upon the super-imposition upon 5,000 cases for 1943 of his five-year experience in a total of 17,843 cases on his hearing calendars in that period. He has applied to 5,000 general State Board judgments (not all his) for 1943 the same percentages which his experience in his appeals over the five-year period has shown.

Applying this experience of his further, he shows that in the event the State Board disposes of 20,000 appeals in a year the total amount of the money judgments (taxes—not assessments) would be between \$2,500,000.00 and \$3,000,000.00 annually.

This analysis does not agree with the report of Secretary Cook to the Commission to Study Reorganization of State Departments dated March 10, 1944, wherein he states: "An examination of 5,000 appeals in the State Board docket will show that only 25% of that number are actually heard by the presentation of testimony before the Board. Stipulations are filed in writing, or consents entered into on many hearing dates, etc." In the testimony it was indicated that Mr. Cook's analysis was fairly representative of State Board judgments as a whole, and that 75% of the cases were not tried.

Whichever percentage is more nearly correct would depend upon which 5,000 cases analyzed was the more representative—and also upon the fact of whether or not the experience of Commissioner Kreamer in his appeals was representative of the experience of the other five Commissioners hearing appeals. It is not stated in either case, whether Jersey City cases (where consents are very rare) were included in the 5,000 analyzed, but I must assume they were in both, and that each analysis was intended and believed to be representative.

Majority Members Meeting as Group.

5. Commissioners Huegel, Harrigan, Smith and Sharp (with former Commissioner Hoff while in office) met as a group to discuss and decide on matters pending before the Board and, at such meetings or as a result of same, agreed as to their vote. These group meetings began on or before October 26, 1943, the date of the Board meeting at which President Waesche presented his report on the N. J. Central Railroad appeal for 1943. These group meetings continued thereafter in connection with the judgment in

that case and the preparation of an opinion which was filed therein on November 8, 1944, as well as in connection with the Board's action in the 1943 Pennsylvania Railroad case and the preparation of an opinion therein which was filed April 25, 1945, and also in connection with the preparation of a letter to the Governor which was dated January 5, 1944, and in connection with resolutions and other opinions and actions in railroad matters. It does not appear that these four present Commissioners met as a group in matters other than Railroad appeals. In some of those matters, in actions taken by them, they are referred to as the majority group. These group discussions did not take place at Board meetings, and Commissioners Waesche and Kreamer were not present thereat and were not invited thereto. The decisions reached by this group at their meetings were unanimous among the members of the group and were so carried out by action of the Board of which they constituted a majority. It does not appear that their discussions at these group meetings were communicated to the Board or to the other two members. Commissioner Harrigan testified that the group was never organized and never existed as a group, but later he and others refer to the "group," and he stated that sometimes the five met in advance of meetings to discuss Board action; that before decisions of the Board were made the five had occasionally met separately and apart from the other Board members and agreed what their vote would be on a particular question and when asked why the five met as a group rather than at Board meetings of all the members he replied: "Because Mr. Waesche had already put in his report (referring to the 1943 Central Railroad case—presented to the Board on October 26, 1944) as to what he wanted and Mr. Kreamer said he was going along with Mr. Waesche blind." This seems also to be the reason of the present four of this group for holding such separate group meetings—and it indicates that this situation began about October 26, 1943, and arose out of differences of opinion within the Board concerning railroad cases.

It seems to have been the opinion of this group that it was necessary for them to meet in this way and that it would be useless to discuss those matters with the other two members because they understood the other two members had reached opposing opinions.

58,000 Jersey City and 8,000 Hoboken 1943 and 1944 Special Appeals.

6. An anomalous situation has developed in the State Board of Tax Appeals as a result of the filing by the City of Jersey City of 40,000 appeals for 1943 and 28,000 appeals for 1944, and by the filing by the City of Hoboken of 3,605 appeals for 1943 and 4,283 appeals for 1944. These 1944 appeals had not been filed by the conclusion of the public hearings in this investigation, but in the case of Jersey City the State Board had been informed by letter from its corporation counsel of May 20, 1944, that Jersey City intended to file such appeals for 1944. (Secretary has since given me the 1944 figures.) During the Fall of 1944, Jersey City withdrew 10,000 of its 1943 appeals.

In form, these particular appeals appear to be filed under Section 54:2-39, which is the section covering appeals from judgments of the County Board of Taxation to the State Board of Tax Appeals. This is

the section of the law under which all appeals come from the County Boards to the State Board, and in all those cases the County Board has entered a judgment decreasing or affirming the municipal assessment; if the taxpayer complains because the County Board affirmed the City assessment and granted him no decrease, or because the decrease granted was too small, the taxpayer will file an appeal with the State Board; on the other hand, if the municipality complains that the decrease in the amount of the City assessment granted by the County Board was too great, the municipality will appeal to the State Board. It will be noted that in these appeals to the State Board the complaint is against the County Board action in either decreasing or affirming the City assessment. The City assessment is not the amount which the City assessors filed with the County Board on January 10th. The City assessment is what the equalization table of the County Board certifies it to be on March 10th. After March 10th, following such certification by the County Board, the valuations in said equalization table become the assessments of the municipality as to real property within its borders. The County Boards on or before April 1st delivered the certified corrected and revised tax duplicates to the collectors of the municipalities.

These particular appeals of Jersey City and Hoboken, therefore, are not really complaints under Section 54:2-39 against assessment reductions in the City assessments made by the County Board, but they are really complaints against the equalization table made and completed and certified by the County Board between January 25th and March 10th of the years 1943 and 1944, respectively.

There is a provision in the State Board of Tax Appeals Act specifically covering this situation and such particular appeals of a municipality against a County equalization table, known as R. S. 54:2-37, which provides that a County equalization table may be reviewed by the State Board on complaint of any municipality or taxpayer in the County, or on the State Board's own motion, and that such review shall not suspend the apportionment of moneys or collection of taxes—and that if, after hearing, on five days' notice to the municipality, the State Board shall decide that the County Board's valuation was erroneous, it shall revise and correct the equalization table and ascertain the difference in the amount of State and County taxes as to each municipality according to the equalization table as so corrected, and such differences shall be debited or credited to or against such municipality on account of its share of State and County taxes next due or distributable, **and that such review of the State Board shall be completed before June 10th annually.** This particular type of appeal from municipalities to the State Board is covered by Sub-paragraph (b) of Rule V of the State Board which reads: "Petitions under Revised Statutes Section 54:2-37 for the review of a County equalization table **shall be filed within 60 days from the date of the confirmation of such tables by the County Board.** A copy of the petition shall be served by the petitioner on the President or Secretary of the County Board of Taxation whose action is to be reviewed, on the Director or Clerk of the Board of Chosen Freeholders and upon the Clerk of every municipality in the County."

It would appear that this Rule requires that such appeals would be filed with the State Board by May 10th. These Jersey City and Hoboken petitions were filed with the State Board on or about December 15th of

1943 and 1944, respectively. It would appear also that a municipality would have the right to file a complaint against a County equalization table, if filed promptly with the State Tax Commissioner under Article 4 of Title 54 of the Revised Statutes, which neither of those cities has done.

Neither Jersey City nor Hoboken took any steps to have the County Board equalization tables reviewed by the State Board or the State Tax Commissioner, but sent out their tax bills at the equalized assessments and at the increased tax rate and adopted their budgets and tax ordinances and made their appropriations on the basis of the equalization tables as they were obliged to do by law, and by reason thereof, said equalized assessments became the assessments of the Cities to the same extent as though said equalization assessments had been the same as the assessments in the assessors' lists which were filed with the County Board on January 10th. Therefore, Jersey City and Hoboken are really appealing to the State Board against their own assessments, and asking to have their own assessments increased.

The State Board has taken no action on these unusual appeals. It decided to consult the Attorney-General and ask for a memorandum of the law, to which he replied requesting more detail as to the legal questions involved, and the State Board decided later that it should not seek an opinion of the Attorney-General.

In testifying on this matter, Secretary Cook stated that these appeals were very unusual and that he had never known of any other appeals to the State Board like them. He stated that there have been cases of appeals of a municipality to the State Board against a County Board equalization table, notably the Camden City case or what is now known as R. S. 54:2-37 aforementioned, but these Jersey City and Hoboken appeals have not followed the procedure in the Camden case where the same issue was involved.

There is another section of the State Board Act, R. S. 54:2-35, which provides that any action or determination of a County Board may be appealed for review to the State Board **under such rules and regulations as the State Board may from time to time** prescribe and that the State Board may review such action and proceedings and give such judgment therein as it may think proper. The State Board has another rule which applies to this particular section of the law, namely, Sub-paragraph (c) of Rule V, which provides that all other appeals from actions or determinations of County Boards shall be filed within **three months** from the date of the action or determination of the County Board appealed from. Under that Rule these appeals of Jersey City and Hoboken could not have been filed with the State Board under said R. S. 54:2-35 after June 11th, whereas they were filed, in each case, for each year, on or about December 15th.

In essence and in substance, and regardless of the form of the petitions, these particular appeals of Jersey City and Hoboken would seem to come under the provisions of R. S. 54:2-37 and Rule V (b) of the State Board, and to have been filed about seven months too late. In these appeals the cities of Jersey City and Hoboken are petitioning the State Board to restore the original valuation set forth in the assessors' lists filed with the County Board on January 10th of 1943, and 1944, respectively, which original assessors' valuations were never, and never became, the assessments of those municipalities for those years. If the State Board were to increase the valuations covered by these Jersey City appeals, the result

would be that Jersey City would collect several million dollars in additional taxes for those two years, none of which has been budgeted or appropriated and all of which, if collected, would be surplus.

Without expressing my own legal opinion on this pending question, but reporting the testimony and the applicable laws, it appears from the testimony of the Board members that, in such appeals, the State Board has no power to raise assessments made by taxing districts, regardless of the hearing testimony, and, therefore, that it could not, in these appeals, raise the assessments made by Jersey City and Hoboken in accordance with the County Board equalization and certification, and could not consider any hearing testimony to the extent that it fixed values higher than such assessments.

Correction of Errors under Special Act.

7. Under a rather unusual section of the Statutes known as R. S. 54:2-41, the State Board has granted very few reductions and for that reason it would seem to be relatively unimportant, but because of the views of the members on this Section given at the hearings and the manner in which the State Board has proceeded under it, I think it is a source of potential danger, and that I should report thereon.

This Section reads as follows: "The Board may at any time on application by a property owner, with the consent of the mayor or assessor of the municipality affected, correct errors and mistakes in tax appeals." The source of this act is Chapter 67 of the Laws of 1905. From the testimony of Commissioner Kreamer thereon, generally concurred in by Commissioners Harrigan, Huegel, Smith and Sharp, it appears that these members feel that this statute makes it practically mandatory upon the State Board to enter a judgment granting any reduction, at any time, upon the petition of any property owner, provided only that the petition bears thereon the consent of the mayor or assessor of the municipality affected, without any necessity on the part of the property owner, or of the mayor or the assessor, to allege or specify or prove any particulars or facts as to the errors or mistakes complained of. And these six commissioners have acted accordingly in entering such judgments. It appears that they feel that because the assessor or mayor has consented, they virtually have no right or discretion to refuse them or to deny them, or to enter a judgment for an amount different than that sought in such petition or application, or to require the production of any specifications or proof of the error or mistake involved. This also seems to have been the practice of the State Board for many years past, antedating the membership of all the present members.

I did not procure records of such cases back of 1939, but Mr. Cook had testified that about an average of five or six such judgments had been entered yearly. Thirty-four such judgments were entered by the State Board during the six year period 1939 to 1944, both years inclusive—

- 11 in the year 1939 reducing 1938 assessments
- 8 in the year 1940 reducing 1937-1938 and 1939 assessments
- 5 in the year 1941 reducing 1940 and 1941 assessments
- 7 in the year 1942 reducing 1932, 1933, 1934, 1935 and 1941 assessments
- 1 in the year 1943 reducing a 1942 assessment
- 2 in the year 1944 reducing 1943 assessments

I have examined the petition of appeal and the judgment in each of these 34 cases, and in none of these documents is there any allegation of any error or mistake and nothing beyond the request of the property owner for a reduction of the assessment to a figure therein specified. The form of the petition in these cases is the same as that used in ordinary appeals, and in some there is not even a reference made to this Section. The judgments entered are similar to the judgments usually entered, except they refer to the consent of the municipality.

In some of these cases no appeal had been filed with the County Board—in others no appeal had been filed with the State Board—in another the litigant had been unsuccessful in court; in some others the State Board thereby reversed its previous judgments for several previous years. In every case the time for filing an appeal with the State Board had long since expired.

Petitions of appeal must be filed with the State Board on or before December 15th in the year for which the assessment was made. These cases could not have been heard or decided under any other Section of the Statute. These State Board judgments all seem to have been entered on the date that the Petition therefor was filed with the State Board.

In the recent case Oradell vs. State Board of Tax Appeals affirmed by the Court of Errors and Appeals, reviewing such a State Board judgment, the Court held that the State Board **may at any time** with consent of mayor or assessor of the municipality affected, make correction of errors without hearing, and without notice to the municipality, and that this Section **allows** the State Board so to do. There is nothing in this decision making it mandatory upon the Board so to do or to justify apparent belief of Board members that their Board has no discretion to deny such an application. In this case the Borough of Oradell complained against the action of its assessor in granting consent to the reduction and complained also because the governing body of the Borough had been given no notice and granted no hearing by the State Board.

However, the language of this decision is **may** (not shall) and that this Section **allows** (not compels). The language of the Section itself is **may—not shall**—which would seem to mean that granting reductions under this Section is discretionary with the State Board, not mandatory. The Rules of the State Board have a special rule on this subject, Rule VI, which provides that petitions under R. S. 54:2-41 **shall set forth facts which constitute the error.**

There were two other State Board cases of correction of errors under R. S. 54:2-41 which were the subject of considerable testimony and exhibits at the hearings. One was an appeal of Duncan Company on its property located in Jersey City against the assessment levied for the year 1936. No appeal for 1936 had been filed with the State Board. On March 1, 1938, a petition of Duncan Co. (bearing thereon the consent of the assessor of Jersey City) was filed with the State Board asking for a reduction of \$150,000.00 on its 1936 building assessment, and, on the same day, the State Board entered a Judgment granting the reduction asked for. This appeal was filed 15 months too late to permit the State Board to hear it under the general provisions of the Act, and a reduction could be granted only under the said Correction of Errors Section. This case differed in no way from the others aforementioned; like them, this petition did not set forth the

facts which constituted the errors sought to be corrected as required by the State Board Rule.

The other case was the petition of E. J. E. Realty Co., owner (the Guardian Life Insurance Co. was a Mortgagee in possession—and John Warren, Esquire, was the attorney) for the entry of a State Board judgment based on a Stipulation entered into between Counsel for Jersey City and Mr. Warren consenting to reduction (therein stated) of the 1934 assessment on this property in Jersey City. This, and a number of other cases involving appeals for both 1934 and 1935, had been referred to Commissioner Sharp for hearing in December, 1935. On January 15, 1936, the aforementioned Stipulation covering all these appeals for both years was made, whereupon Mr. Warren wrote to Mrs. Sharp asking her to have judgments entered as per the filed Stipulation. On January 28, 1936, Mr. Cook wrote Mr. Warren stating the 1934 and 1935 appeals on one property covered by the Stipulation could not be found in the office. The next day Mr. Warren replied that Mr. Edwards, president of the owner corporation, claimed to have mailed it within time to the State Board. (It appears that copies of this petition had been previously served on the City and County Board.) This was an appeal from the County Board judgment which had affirmed the 1934 assessment. A few days later Mr. Cook replied that the 1935 petition had been found but that he had not found the 1934 petition—and that judgments had been entered by the State Board as to all appeals except as to this one property for 1934. Mr. Warren talked with Mr. Cook later and was told that nothing could be done as it was too late to file a 1934 petition. Then Mr. Warren had Mr. Edwards sign a new petition which, with the consent of the Corporation Counsel endorsed thereon that it be filed within time, he filed with the State Board on June 19, 1936. Mr. Cook wrote Mr. Warren on July 2, 1936, that the appeal could not be filed because the time to file had expired. Shortly thereafter, the Corporation Counsel telephoned the State Board office asking that the Petition be filed as of time and judgment entered on the Stipulation. Correspondence followed between Mr. Warren and the Corporation Counsel trying to dispose of the matter. On December 18, 1936, the Corporation Counsel wrote Mr. Warren enclosing a form of State Board consent Judgment and Petition which he had just received from the State Board, asking that it be executed and returned to him; Mr. Edwards executed same and Mr. Warren returned same in a few days to the Corporation Counsel requesting that it be executed by Mr. Potterton (as the Assessor). It seems these papers became mislaid in the office of the Jersey City officials and many talks followed during 1937 and 1938 between Mr. Warren and Jersey City officials trying to settle the matter. On September 13, 1938, the papers were found and the consent on the petition was signed by Mr. Potterton (as the Assessor) and the County Board consent also signed thereon and on September 16, 1938, Mr. Warren mailed same to the State Board. On September 28, 1938, Mr. Cook replied: "I am returning the above entitled appeal herewith as it is the policy of this Board not to accept these **appeals to correct errors** after 2 years have elapsed. If you so desire you may appear before the Board and present facts why this Board should accept an appeal of this kind at this date." On October 4, 1938, Mr. Warren appeared, as arranged, but there was no quorum of the Board—he appeared before the Board on October 18, 1938, and explained the matter. The State

Board took his request under advisement and he never heard anything further from the Board and no action was taken by the Board. He continued pressing the officials of Jersey City until June 3, 1940, when this particular property was advertised for tax sale for the unpaid balance of the 1934 taxes. (When the Stipulation was entered into in January, 1936, believing that Judgments would be entered accordingly, Mr. Warren paid the 1934 and 1935 taxes on all the properties involved at the reduced amounts fixed by the Stipulations—so that failing entry of Judgment on this one property the Jersey City books showed an unpaid 1934 tax balance.) Then, on June 5, 1940, Mr. Warren started a suit in the Court of Chancery and had the sale enjoined, whereupon two days later, on June 7, 1940, at the request of the Corporation Counsel of Jersey City, the State Board entered Judgments granting the reduction covered by the Stipulation of January 15, 1936, and by the Petition of September 13, 1938, bearing thereon the consent of Mr. Potterton—under the said correction of errors section of the Statute.

Exhibits Mainly of Jersey City Assessments and State Board Judgments Thereon.

8. Elaborate schedules were prepared and admitted in evidence as Exhibits in this investigation, and numbered Exhibits 3, 4, 5, 6 and 25. Each of them is in great detail and covers a large number of assessments which were the subject of appeals to the State Board in various years covering principally assessments of lands situated in the City of Jersey City and State Board judgments thereon, and some assessments on lands situated in the Cities of Newark and Hoboken, respectively. These Exhibits were introduced to show the extent of reductions made by State Board judgments, comparison between City assessments and State Board judgments, and effects of State Board judgments upon uniformity or lack of uniformity in unit foot values of contiguous lands.

All of these Exhibits relate to land assessments only, as it would be impracticable to include building assessments in any such study. Photostatic copies of these Exhibits were prepared and given to the attorney of Commissioners Harrigan, Huegel, Sharp and Smith, several weeks before the close of the hearing so that they might have the opportunity to check and investigate the items thereon, and when they were offered I particularly requested the Board members and Secretary Cook to check and investigate them carefully or have the same done for them. At the same time, I informed all of the parties concerned with the investigation that I had arranged with Honorable Homer C. Zink, Commissioner of State Department of Taxation and Finance, to lend me several of the auditors of the Comptroller's department to audit and check these Exhibits, and these auditors did check and audit all of these Exhibits in detail and reported thereon all inaccuracies and corrections resulting from their check and audit, which auditors' reports were also admitted in evidence in the investigation; the audit and check of these auditors showed only a few minor inaccuracies. With the exception of the calculations of the front foot land values (division of the amount of the State Board judgments by the front foot dimensions of the land) the items, matters and figures on these Exhibits were copied from official public records in the office of the State Board and, where necessary to get complete information as to some of the

Exhibits, from the official public records of the County Board of Taxation. The members of the State Board had ample time and opportunity to investigate and check, or to have investigated or checked for them, the items and matters contained in these Exhibits, and to explain or clarify or correct anything thereon. None of the items or figures in these Exhibits has been disputed as to accuracy or as to the fact that such items and figures are true and correct copies of the official public records aforementioned, and neither has there been any dispute of the calculations of front foot values appearing on some of these Exhibits.

All of these Exhibits contain many columns of information as to each particular property covered thereby, such as name of owner, street address, block and lot number of the property—its dimensions, amount of City land assessment, amount of State Board judgment (in some cases the amount of County Board judgment), name of State Board member who heard the case and reported the judgment, some the amount of the City assessment (Jersey City) for the year 1929, several percentages of reductions and some memoranda from State Board records as to judgments by consent, etc., and generally the detail as to each property is complete and extensive.

Said Exhibits are further described as follows:

Exhibit No. 3

Exhibit No. 3 is a study of 174 properties located in the City of Hoboken, for the year 1942, set up in related groups and selected on the basis that the properties were contiguous—in the same block, or immediately adjoining and similar. It consists of 11 large sheets (14 columns on each sheet) of details including the 1942 assessments and the State Board judgments thereon. One hundred fifty of these appeals were heard by Commissioners Smith and Hoff sitting together; 19 by Commissioner Hoff alone, and 5 by Commissioner Smith alone. The situation as to those heard alone seems not to differ substantially from those heard together.

Exhibit No. 3 was prepared and introduced to show uniformity or lack of uniformity in the front foot valuations of contiguous lands—in the same block or immediately adjoining and similar, resulting from State Board judgments. It does show considerable lack of such uniformity.

But Exhibit No. 3, coincidentally, also shows another interesting comparison as to the assessments and appeals covered thereby, namely:

Total of City 1942 Land Assessments	Total of County Board Judgments Thereon	Total of State Board Judgments Thereon
\$2,117,000.00	\$1,315,300.00	\$1,888,300.00

These totals show that the County Board judgments reduced the City land assessments by \$801,700.00, or 38%—but that the State Board judgments reduced the City land assessments by only \$228,700.00, or less than 11%, and that the State Board judgments wiped out \$573,000.00, or nearly 71% of the reductions that had been granted by the County Board judgments.

Some of these State Board judgments were entered on consents of the City and the taxpayers and no testimony heard, and some of these appeals were dismissed for lack of prosecution, in which latter event the County Board judgment was automatically affirmed. But many of these State

Board appeals were contested and the State Board judgments entered in the contested cases do not appear to make any substantial difference in the meaning or application of this Exhibit.

Exhibits No. 4 and No. 5

Exhibit No. 4 is a comparative study between the City of Newark and the City of Jersey City as to land assessments and State Board judgments thereon, in each of said Cities, for each of the years 1937 and 1941. Only those cases were selected for this comparison where there was an appeal on the same property against the assessments for **both** of the years 1937 and 1941. The selection was made from the docket cards in the State Board office, all of which are numbered. The reason for starting with the year 1937 was due to the fact that 1937 was the first assessment year for which the State Board had docket cards. Starting with the docket cards for the 1937 assessments, the first card which would show that the same property was subject to a State Board appeal as to the 1941 assessment would be chosen, and thereafter every twentieth card, consecutively, would be chosen if there was a State Board appeal as to the same property for both assessment years 1937 and 1941. If any twentieth card showed no such appeal for both years, then the next card, in order, that would show appeals on the same property for both years, would be selected, and this selection was followed as to each of these Cities. This selection found 384 Newark properties and 306 Jersey City properties subject to State Board appeals as to assessments for both 1937 and 1941. Exhibit No. 4 consists of 13 sheets; some of these sheets are double sheets. These Exhibits, No. 4 and No. 5, were offered to show a comparison of State Board action as between those two Cities where the same property came before the State Board for both of those years. Exhibit No. 5 is a recapitulation of Exhibit No. 4.

(Exhibit No. 4 concerns assessments for the years 1937 and 1941, respectively; these State Board judgments were entered in later years, respectively.)

All of these Jersey City State Board judgments for the year 1937 appear to have been entered on reports of Commissioner Sharp, with the exception of about a dozen reported by a former Commissioner.

None of these Newark State Board judgments for the year 1937 appears to have been entered on reports of Commissioner Sharp, but many upon reports of former Commissioners, some upon reports of Commissioner Kreamer and a few upon reports of Commissioners Huegel and Smith.

The Jersey City State Board judgments for the year 1941 principally upon reports of Commissioners Kreamer and Harrigan, and a few on reports of Commissioners Huegel and Smith, and none upon the reports of Commissioner Sharp.

The Newark State Board judgments for the year 1941 appear to have been entered upon reports of Commissioner Huegel, principally, and a considerable number upon reports of Commissioners Harrigan, Smith and Sharp and a former Commissioner.

The following table will give the substance and recapitulation of Exhibits No. 4 and No. 5:

	1937 Assessments	State Board Judgments	State Board Reductions	State Board Reductions in Per Cent
Newark	\$4,619,200	\$3,879,100	\$740,100	.16
Jersey City	2,184,300	2,147,800	36,500	— .02
1941				
Newark	3,161,670	2,629,640	532,030	.17
Jersey City	2,202,700	1,839,570	363,130	.17
	1937 Assessments	State Board Judgments for 1941	State Board Reduction for 1941 Compared to 1937 Assessment	State Board Reduction for 1941 Compared to 1937 Assessment (Per Cent)
Newark	\$4,619,200	\$2,629,640	\$1,989,560	.43
Jersey City	2,184,300	1,839,570	344,700	.16

It will be noted Newark reduced its own land assessments (covered by Exhibit No. 4), \$1,457,530.00, or 31% between 1937 and 1941, whereas Jersey City increased its land assessments (covered by Exhibit No. 4) by \$18,400.00 or nearly 1% between those same years.

The land assessment figures for 1937 and 1941 were taken from the State Board docket cards, which do not show the original City assessments but only the City assessments after County Board judgment reducing or affirming them. Therefore, the State Board reductions in the above tables, in the case of Newark, no doubt represent in many cases second reductions further reducing the assessments as previously reduced by the County Board judgments—this would not apply in the case of the above Jersey City assessment figures as the Hudson County Board on assessments made for years prior to 1942, affirmed the City assessments.

Therefore, the aforesaid Jersey City assessments for the years 1937 and 1941, respectively (as per Exhibits No. 4 and 5), are substantially the same as the Jersey City assessments for the year 1929, and the aforesaid reductions granted by the State Board for 1937 and 1941, respectively, are really reductions from substantially the same assessments for 1929.

Exhibit No. 6

Exhibit No. 6 is a comparative study of land assessments of the City of Jersey City and judgments entered in the years 1940-1941-1942-1943 and 1944 with respect to said assessments. This Exhibit consists of 68 large sheets (10 columns on each sheet) of details, including the assessments under appeal, the State Board judgments thereon, and the assessments for 1929. The appeals covered thereby were all selected from the State Board minutes in the following manner: for the year 1940, every 10th consecutive appeal (as it appeared in said minutes) was selected and, for each of the years 1941-1942-1943 and 1944, every 20th consecutive

appeal was selected; the reason for the change from every 10th appeal in 1940 to every 20th appeal thereafter was due to the much larger number of State Board judgments entered on appeals during the four latter years.

The first sheet of this Exhibit is a recapitulation of the details of the remaining 67 sheets and shows the following:

Year of Entry of State Board Judgments	Number of Appeals Considered	Total of City Assessments	Total of State Board Judgments
1940	512	\$3,779,850	\$3,615,300
1941	260	1,836,900	1,737,650
1942 to 7/1	135	1,680,900	1,556,700
1942 after 11/30	15	75,000	56,800
1943	232	1,182,300	965,975
1944	299	1,515,400	1,138,050

Year of Entry of State Board Judgments	Number of cases in which State Board granted Reductions	Total of State Board Reductions	Per cent of Deductions Granted by State Board	Per cent of cases in which State Board Granted Reductions
1940	61	\$164,550	.04+	.11+
1941	58	99,250	.05+	.22+
1942 to 7/1	27	124,200	.07+	.20
1942 after 11/30	13	18,200	.24+	.86+
1943	194	216,325	.20+	.83+
1944	275	377,350	.24+	.91+

This Exhibit shows a sharp difference between the amount and number of reductions granted by State Board judgments which were entered in the period preceding November, 1942, as compared to the amount and number of reductions granted by State Board judgments which were entered after November, 1942. In August, 1942, the Governor removed the old Hudson County Board of Taxation and appointed a new County Board which took office early in August, 1942, and proceeded to hear and determine (between August 15th and November 15th, of that year) the 1942 appeals then pending before that Board and entered judgments which drastically reduced the Jersey City assessments for that year. The evidence in this investigation is conclusive that the Jersey City land assessments (with very few exceptions) were not decreased by the City between 1929 and 1942, inclusive, but were the same for 1942 and for each year preceding 1942 and following 1929 as they had been for the year 1929. (It was not until these City assessments were equalized and revised downwardly by the Hudson County Board for the year 1943, that a change or decrease in the 1929 Jersey City land assessments took place.)

Prior to the advent of the new Hudson County Board (prior to August, 1942), it had been the practice of the old Hudson County Board not to grant hearings to taxpayers on appeals from Jersey City assessments to that Board but to affirm, without hearing, the assessments made by that City (there having been very few exceptions to this practice). Consequently, all appeals to the State Board from judgments of the County Board as to Jersey City assessments for the year 1941, and for years prior thereto,

were in effect appeals from the original City assessments for those years, as the amounts of the County Board judgments for those years were, in practically every instance, the same as the original City assessments, and therefore, any reductions granted by State Board judgments on appeals from the County Board for years prior to 1942 were really reductions from the original City assessments rather than from County Board judgments.

Immediately after November 15, 1942, when the Hudson County Board had completed its hearings of 1942 appeals and had entered its judgments thereon for very substantial reductions, there was an extraordinary change in the judgments thereafter entered by the State Board on appeals concerning Jersey City assessments as compared to the State Board judgments which had been entered prior thereto, which is evident from the above recapitulation table.

By breaking the above recapitulation table up into two parts, or two periods, namely, one to cover the period starting January 1, 1940, and ending July 1, 1942, and the other starting December 1, 1942, and ending on July 18, 1944, we find, as to State Board judgments entered in those respective periods, the following:

First Period—From January 1, 1940, to July 1, 1942

Total Number of Appeals Considered	Number of cases in which State Board Granted Reductions	Total of State Board Reductions	Per cent of Reductions Granted by State Board	Per cent of cases in which State Board Granted Reductions
907	146	\$388,000	.05	.16

Second Period—From December 1, 1942, to July 18, 1944

Total Number of Appeals Considered	Number of cases in which State Board Granted Reductions	Total of State Board Reductions	Per cent of Reductions Granted by State Board	Per cent of cases in which State Board Granted Reductions
546	482	\$611,875	.23—	.88+

In the first period (from January 1, 1940, to July 1, 1942) most of these appeals were heard by Commissioner Sharp and most of the judgments entered by the State Board were upon her reports. The total amount of State Board judgments in this period reported by Commissioner Sharp was approximately \$5,300,000.00, and the reductions granted by her said judgments in that period represented about 6 2/3% of the City assessments of the properties covered by those judgments.

In the same period (up to July 1, 1942) the State Board judgments entered on reports of Commissioner Kreamer approximated \$375,000.00, and the reductions granted thereby represented about 20% of the City assessments of the properties covered by those judgments.

In the same period (up to July 1, 1942) the State Board judgments entered on reports of Commissioner Smith approximated \$650,000.00, and the reductions granted thereby represented about 1% of the City assessments of the properties covered by those judgments.

In the same period (up to July 1, 1942) the State Board judgments entered on reports of Commissioner Huegel approximated only \$150,000.00, and the reductions granted thereby represented about 1% of the City assessments of the properties covered by those judgments.

As to the State Board judgments entered in the second period (after November 30, 1942) the reductions made thereby, as based upon the reports of the respective commissioners, were as follows:

By Commissioners Harrigan and Kreamer (together)—\$116,000—Reduction 25%+.

By Commissioner Harrigan—\$720,000—Reduction 22%.

By Commissioner Kreamer—\$292,000—Reduction 22%.

By Commissioner Huegel—\$528,000—Reduction 21%.

By Commissioner Smith—\$542,000—Reduction 20%.

Commissioner Sharp did not hear any of the Jersey City appeals for which State Board judgments were entered during said second period (after November 30, 1942).

The State Board judgments entered during the first period (up to July 1, 1942) were entered on appeals of assessments levied by the City for the years 1937-1938-1939 and 1940 and a few for earlier years. The State Board judgments entered during the second period (December 1, 1942, to July 18, 1944) were entered on appeals of assessments levied by the City for the years 1941 and 1942.

It was not until March, 1944, when the State Board began to hear Jersey City appeals against 1942 assessments that it was possible to get a comparison between County Board judgments and State Board judgments because 1942 appeals were the first in which the County Board held hearings and granted reductions. Therefore, to show this comparison, I have extracted from Exhibit No. 6 the cases as to each hearing Commissioner, where State Board judgments were entered between March 7th and July 18th (and on both dates inclusive), 1944, on 1942 Jersey City appeals, and this shows the following:

Totals as to All Jersey City Hearing Members

1929 Assessments	1942 Assessments	State Board Judgments	County Board Judgments
\$1,245,800	\$1,238,600	\$908,700	\$655,400
State Board Reductions	County Board Reductions	County Board Reductions Greater than State Board Reductions by	
-27%	+48%	+21%	

These totals broken down as between the Jersey City hearing Commissioners show:

	1929 Assessments	1942 Assessments	State Board Judgments	County Board Judgments
Kreamer	\$64,000	\$64,000	\$39,200	\$30,200
Huegel	396,200	396,100	287,000	214,600
Harrigan	365,400	364,500	252,700	199,900
Smith	420,200	414,000	329,800	210,700

	State Board Reductions	County Board Reductions	County Board Reductions Greater than State Board Reductions by
Kreamer	39%	54%	15%
Huegel	-28%	46%	+18%
Harrigan	-30%	-46%	16%
Smith	20%	49%	29%

(Only seven of these cases were heard by Commissioner Kreamer.)

Exhibit No. 25

Exhibit No. 25 is a study of 1,103 assessments of properties located in the City of Jersey City for the years 1939-1940 and 1941, and State Board judgments entered thereon in later years. These groups of properties were selected on the basis that the lands were contiguous, adjoining or in the same block, and the original assessments alike, and therefore comparable. It consists of 58 sheets, numerous columns on each sheet, of details as to each of said properties, the land assessments, State Board judgments, State Board reductions, complete descriptions of the properties and name of hearing Commissioners, etc., for each of those years.

Exhibit No. 25

	Land Assessment	State Board Judgment	State Board Reduction	Per cent State Board Reduction
Kreamer and Harrigan	\$1,593,400	\$1,247,850	\$345,550	21%
Huegel	1,423,400	1,147,520	275,880	+19%
Smith	644,400	556,750	87,650	+13%
Totals	\$3,661,200	\$2,952,120	\$709,080	+19%
Sharp	4,528,300	4,044,350	483,950	+10%
Grand Totals	\$8,189,500	\$6,996,470	\$1,193,030	+14%

The 1929 assessments in the above cases were virtually the same as the assessments shown above for the years 1939-1940 and 1941. Judgments on these appeals were entered between 1940 and 1944.

Included in the 1,103 cases covered by the above Exhibit No. 25 were 387 cases in which State Board judgments were entered after November 30, 1942 (after the new Hudson County Board had made drastic reductions).

Mrs. Sharp heard practically all of the 1939 and 1940 cases.

The 1941 cases, including those upon which Judgments were entered after November 30, 1942, were those heard by Commissioners Harrigan, Kreamer, Huegel and Smith.

This Exhibit was offered to show the effect of State Board judgments upon uniformity or lack of uniformity in the assessments or valuations of groups of lots contiguous, adjoining or in the same block, similar and comparable by reason of like original assessments and it does show many cases of substantial lack of uniformity. But while not intended as a comparison of assessments and State Board judgments generally or in connection with the question of true value, it does have some value in that connection.

On last two days of the hearings, Commissioner Harrigan testified for himself and for Commissioners Huegel, Sharp and Smith as to Exhibits No. 3, No. 4, No. 5, No. 6 and No. 25, as follows:

(a) As to Exhibit No. 3, he thought it did not distinguish between consent and contested cases and that he just made a quick note of this Exhibit and that it doesn't represent a thing and that he couldn't get a thing out of it; but later, he corrected this testimony and said he was mistaken on the previous day in stating that Exhibit No. 3 did not specify consent and non-consent judgments.

(b) Referring to Exhibits No. 6, No. 4 and No. 5, in answer to a question of his attorney as to whether there could be an intelligent comparison of that kind (by percentages) on a spot check of an appeal here and there, or even if you had them all, could the thing be resolved on a percentage basis, Commissioner Harrigan replied that it could not, to his mind.

(c) As to Exhibits No. 4 and No. 5, Commissioner Harrigan testified that Newark had a definite program to reduce land assessments about 1938 or 1939 which was known to the members of the State Board—a program to reduce over a period of years starting with 1939; that since then about seventy percent of Newark cases have been settled without testimony and granting substantial reductions, but that Jersey City has settled less than one-quarter of one per cent of its cases; that percentages don't tell the tale; that Newark may be over or under assessed, as Jersey City may be; that the State Tax Commissioner has the duty of regulating equalization; that board members can only take appeals and, as such, give decisions as the evidence warrants in each individual case; that in Exhibits No. 4 and No. 5 there is no mention as to whether the cases were contested or consented to and with a number of cases in like that, the board members can't tell from a thing like that what they mean, one way or the other.

(d) Commissioner Harrigan's further testimony as to Exhibit No. 6 was that, like the others, it was a spot check; that he went into his own cases shown thereon for the period after November 30, 1942, and found the percentage reductions for that period to be correct as shown on the Exhibit; that he didn't figure the reductions on that Exhibit for the period prior

to November 30, 1942, and that while he may have looked them over it didn't occur to him; that he did not make a complete check of the Exhibits—that he did not find any errors in what he did check; that he just went over the Exhibits to get a general idea of what happened there.

(e) He questioned Exhibit No. 6 because it does not include the building assessments; these should be included because in cases where property is valued upon an income basis, he first computes the value as a whole and then fixes what he thinks proper, from the testimony, as the value of the land; the law requires one valuation and we cannot allocate part of it to the land; that to be worth anything Exhibit No. 6 should show the whole reduction (on land and building combined); that the tax a man pays is upon both and when you reduce the tax you reduce the property as a whole; that in many New Jersey towns the board members go to there are few or practically no land reductions and yet big reductions on the whole property.

Commissioner Harrigan later admitted that on an appeal a board member first ascertains the value of the whole (land plus building) and next ascertains the value of the land and whatever remains is the value of the building, and that this procedure is in accordance with the law, and that all things being equal, on lots of the same size, adjoining each other, on the same street, his adjudication would be that the land values would be the same.

(f) Referring further to Exhibit 6 when asked how he accounted for State Board Reductions in such far fewer cases and for such greatly lower amounts before November 30, 1942, as compared to those granted after November 30, 1942, he answered that he doesn't try to bring that out; that he gave judgments on the material presented by witnesses—and that he was not questioning the results one way or the other.

(g) Commissioner Harrigan did agree that the depression after 1929 did cause a big drop in land values, but it was possible there might have been increases in land values since then in some new neighborhoods growing up, but generally land values went down and that, on general facts, he supposed it to be correct to say that land values generally in Jersey City did depreciate at least as much as in Newark after 1929.

(h) Commissioner Harrigan in speaking for himself and Commissioners Huegel, Sharp and Smith, generally, as to all these Exhibits (Numbers 3-4-5-6 and 25) said that the accuracy of the Exhibits was not disputed but that he thinks they are not a fair basis for comparison; first, because the percentage basis is not a fair basis; secondly, because a comparison limited to land valuations is not sufficient; thirdly, that some of the Exhibits don't show which cases were contested and which consented to; and fourthly, because they are spot checks and not complete.

(i) On the last hearing day I asked Commissioner Harrigan the following questions to which he made the following answers:

Q. These Exhibits 3, 4, 5, 6 and 25, which are the schedules that we have been talking about this morning, which are very voluminous, as I understand you, you did not check the items on those schedules?

A. No.

Q. Did any member of the board check them as far as you know?

A. Oh, no.

Q. And nobody has checked them?

A. I don't think we would have the time to check them.

Q. I just want the fact.

A. I think the board felt if they were checked through your order, why, they must be correct.

Q. I mean also you didn't check to see which were contested cases and which were consent cases, did you?

A. No, I did not, only in so far as the report shows.

As to the general objections of Commissioner Harrigan (for himself and in behalf of Commissioners Huegel, Sharp and Smith) to Exhibits Nos. 3, 4, 5, 6 and 25, I find nothing to warrant his general conclusion that a comparison is not fair because it is made upon a percentage basis. These Exhibits not only show comparisons upon that basis but they show, as to each of the thousands of appeals included therein, the amount of the assessments in dollars, the amount of the State Board judgments in dollars, and the amount of the State Board reductions in dollars.

His point that the assessments and Judgments relate to land only (without buildings) may have some force but not enough to materially affect the story which these Exhibits tell; with respect to this point the City assesses the land separately and the building separately, the total assessment being made up of two separate items, with land values fairly uniform by blocks or parts of blocks, with the factors of corner influence and depth considered. There may be a large and valuable building producing a high net income and immediately next door there may be a vacant lot producing no income but the land assessment upon each parcel will be the same (assuming them to have the same frontage and depth and having no lack of equality as land). It may be that Judgments, at times, may grant excessive reductions on buildings to avoid granting proper reductions on land, but that practice (which may result in the same total tax saving to the taxpayer) does not fortify Commissioner Harrigan's conclusion—this point, as to the buildings and the whole, so far as concerns the applicability or merit of these Exhibits, seems to be more theoretical than actual—in any event, it could discount the effect of the Exhibits very slightly and unsubstantially.

His point that in some of these Exhibits the consent cases are not distinguished from the contested cases, could not have much force because of his statement that less than one-quarter of one per cent of the Jersey City appeals have been settled by consents, and aside from two minor Exhibits, one as to Hoboken and the other as to Newark (and the Newark one covers Jersey City also) all the Exhibits cover Jersey City appeals. Where, in some of these Exhibits, there appear notations as to consent judgments, I believe the situation disclosed in consent cases does not, on the whole, vary substantially if at all, from that in the contested cases. I believe that such inclusion or omission does not materially affect any of these Exhibits for any proper purpose in this investigation.

As to his point that these Exhibits are spot checks and not a complete check, it is true that they do not cover all of the cases heard by the State Board for all the years involved, but it would be impossible to cover all and, if the check made is a representative sample of all, it gives a fair picture of all. In these Exhibits the cases were not chosen haphazardly, or

arbitrarily, to find particular results; cases were taken as they came along regardless of what they showed, pro or con; every case was selected upon a uniform pattern or method that was followed throughout—as to some Exhibits, every tenth or every twentieth case, consecutively, as the State Board's permanent official records disclosed and as to others (from permanent official records of the County Boards) to find groups of properties that were contiguous to each other (in the same block and adjoining) and which were similar and comparable as shown by similar unit foot land assessments.

Of course, these Exhibits do not prove, as a legal proposition, that any Board member was right or wrong in any one of these State Board judgments, or that the City was right or wrong in any one of these land assessments, or that the County Board was right or wrong in any one of its judgments, but, together, they seem to present a strong claim for the belief that they are representative of a general condition with reference to State Board judgments reported by some of the Commissioners therein mentioned for the periods covered thereby, and that the effect of those State Board judgments, generally, has been to unduly uphold Jersey City land assessments.

A careful consideration of all these Exhibits and all the evidence in this investigation makes that conclusion inescapable.

It must be assumed that this continuance of the same Jersey City land assessments from 1929 through 1942 (practically unchanged) was well known to all the members of the State Board.

The total number of Jersey City State Board judgments covering as many properties, in each of three of these Exhibits, are as follows:

Exhibit No. 6—1,453

Exhibit No. 25—1,103

Exhibit No. 4— 612

Grand Total— 3,168

From other testimony of Commissioner Harrigan, in which he expressed views held by Commissioners Huegel, Sharp and Smith, as well as by himself, it would appear probable that they have a fundamental conviction (not uncommon among tax men) which may have influenced them subconsciously, if not consciously, in their decisions on Jersey City appeals, at least to some extent, but even such a conviction would not seem to account fully for most of the decisions in the Jersey City cases. I refer to his testimony to the effect that he doesn't think any city should be bankrupted in the first year of appeals; that he has had the opinion for years that reductions should be made gradually; that in the back of his mind he has always felt that reductions should be made over a period of three or four or five years; that he has felt that municipal assessors should do this themselves over a period of time and bring valuations down without putting it up to anyone else to do it all at once; that it has been his idea to keep in mind average value over a period of five years or three years or longer in reaching a decision as to what value should be on the particular appeal year; and that you cannot fluctuate valuations from year to year and still maintain ordinary agencies of government. But throughout that particular testimony, Commissioner Harrigan was very definite in stating that his decisions were nevertheless based upon the testimony produced at the particular hearing, and that he tried to arrive at his decisions on the evidence in each case.

Commissioner Harrigan stated that the Board members have had at the hearings tax histories showing the previous assessments for each year, which would show that in most cases the Jersey City land assessments were the same for each subsequent year (presumably he means to 1942, inclusive) as they had been for the year 1929, and that the State Board has entered judgments (presumably to 1942, inclusive) at the 1929 assessment level; that with minor exceptions property had depreciated during the depression since 1929; and this was true in Jersey City as well as in Newark; that during a period after 1929 there was practically no market for real estate at all, and that when there is no market there is no evidence of value; that he does not particularly agree with former President Weaver's decision, with which he is familiar, where Mr. Weaver took notice of the effect of the depression upon reducing values **generally**; that in the case of Newark where sharp adjusted downward revisions in valuations had been made by the City after 1929, State Board judgments on reports of himself and other Board members, in many instances, further reduced such reduced valuations or assessments.

Commissioner Harrigan stated that he knows of no conscious discrimination by the State Board and had never heard of any, throughout the State; that he had never heard of any complaint of real estate men who have testified as experts or attorneys, or others, about inefficiency or details of administration of the State Board or of the hearing Board members. There was testimony also of Secretary Cook and other Board members that Jersey City land assessments remained practically the same each year in disregard of reductions which had been granted by the State Board.

Lack of Uniformity in Valuations Created by State Board Judgments.

9. Exhibit No. 3 relating to Hoboken and Exhibit No. 25 relating to Jersey City involve the question of the effect of State Board judgments upon uniformity or lack of uniformity in land assessments and these Exhibits do show considerable and substantial lack of uniformity in State Board judgments.

This was the subject of a great deal of testimony in the investigation, and all of the Board members discussed this question in their testimony. It seems to be the practice of municipal assessors, generally, to fix, as far as possible, uniform unit foot values by blocks; the term unit foot value meaning the front foot value based upon a standard depth which is usually 100 feet, the front foot value being adjusted by a fixed percentage addition for greater depth or a fixed percentage reduction for a lesser depth, with certain standardized additions for corner influence as to corner lots. In the ordinary block in residential districts, the land has the same unit foot value and it is necessary and important to maintain that uniformity as far as possible, for obvious reasons. The evidence in this case shows that considerable lack of uniformity in land assessments has resulted from State Board judgments; this fact or result was not denied by the Board members but in admitting that it happens, they give reasons therefor, some of which indicate that this results not from any fault on their part, but because of laws which limit and control them.

It was explained that this situation results from differences in the disposition of appeals, as follows: in some cases cross appeals are filed (which means that both the City and the taxpayer have filed petitions and

both are appealing against the County Board judgment as to the same property). As to cases where only one side appeals, the appeal may be withdrawn by the appellant or dismissed for lack of prosecution, which automatically results in the affirmance of the assessment as fixed by the County Board judgment. In cross appeals one of the parties, either the taxpayer or the City, may not appear at the hearing or produce any testimony, in which event the appeal is dismissed as to the party not appearing and is heard, decided and reported solely on the testimony produced by the other party. In some cross appeals, neither party may appear or produce any testimony, in which case both appeals are dismissed; or both parties may withdraw their appeals, and in either event, the assessment fixed by the County Board judgment is thereby automatically affirmed. Some cases are contested, namely, both sides appear and produce testimony of experts, and in those cases the hearing Commissioner puts the probative value upon all the testimony and decides and reports accordingly. Some cases are settled between the City and the taxpayer by their mutual consent as to the amount of the valuation or assessment, which consents are in two forms, one by stipulation signed by the City and the Taxpayer and filed with the State Board, before the appeal is listed for hearing, and the other orally, at the hearing (both of which are hereinafter referred to as consent cases), and in neither of these consent situations is any testimony or evidence taken or heard, but State Board judgments are based and entered entirely upon the mutual agreement of the taxpayer and the City as to the amount of the assessment and reduction. As to some properties no appeals have been filed by the City or the taxpayer so that the entire block is not before the State Board at the same time. That different expert witnesses testify at hearings as to the respective values of the lots in a particular block, and their testimony may differ. That all the appeals for the same year in the same block may not be heard by the same Board member; one Board member may hear one case and at another time another Board member may hear the appeal on the property next door; that these Board members may or may not know or learn of the decision of the other on the adjoining property and there is no ready reference record in the State Board office from which to get this information promptly. That one Board member may have heard an appeal or appeals on a lot or lots in a block last year or the year before, and the member hearing the appeal this year on the same property or properties would not know of the other member's decision on the same property or properties for the year or two previous because of lack of such ready records in the State Board office. It was testified that members do talk with each other about values in certain blocks but with the thousands of cases to be heard, it is apparent that this occasional information could not be adequate. A Board member might hear an appeal and two months later hear an appeal for the same year on another property in the same block; although an effort is made to keep the block hearings together.

State Board Members Use of Own Knowledge and Judgment.

10. In the early hearings it seemed to be the contention and testimony of several Board members that under the law, they had the right to use their own knowledge and judgment in reaching a decision as to value, but later in the hearings the testimony of the Board members was to the effect

that they had no right to use their own knowledge and judgment but were bound by the testimony even though the testimony was contrary to their own knowledge and judgment as to the value. They did say that in contested cases where there was contradictory testimony, they had a right to use their own knowledge and judgment (not their independent knowledge) for the purpose only of putting the probative value upon the testimony, but in those cases they were called to decide upon the value either at the higher figure of the City's testimony, or at the lower figure of the taxpayer's testimony, or at a figure between those two, and that they could not go higher in one case, or lower in the other, and that also in contested cases, the taxpayer was held to the assessment figure set forth in his petition and the City was held to the assessment figure set forth in its petition. If the taxpayer's expert testified that the property had a value greater than the taxpayer alleged it to be in his petition, or if the City's expert testified that the value was lower than the City alleged it to be in its petition, the hearing Board member was bound as to value within the limits of the valuations testified to. That in cases of appeals where the taxpayer did not appear or produce any testimony, the hearing Board member was bound by the undisputed testimony of the City's expert as to value, and that if the City did not appear, or produce any testimony, that the hearing Board member was bound by the undisputed testimony of the taxpayer's expert as to value, regardless of the knowledge and judgment of the hearing Board member, and regardless of any different valuations the same hearing Board member, or any State Board judgment, had placed upon the same property, or any other like property of equal value in the same block or next door or adjoining in the same year or in any previous year, and regardless of the lack of uniformity that such judgment might create, and regardless of whether or not such a State Board judgment would represent the true value of the property in question; that a legal principle was involved in such cases, binding the hearing Board member to accept the undisputed testimony, and that the law did not permit the hearing Board member in such cases to use any knowledge and judgment of his own as to value for any purpose.

Many examples of cases of State Board judgments were discussed, and the Commissioners, with the exception of President Waesche, seemed to be in agreement on the legal principles and limitations; there are three cases in the same block (presumably having the same unit foot value), each of which has been assessed \$100.00 per foot by the City, which assessment has been affirmed by the County Board; the petitions of each taxpayer asks to have the land reduced to \$30.00 per foot; at the State Board hearings the City does not appear or produce any testimony; the expert for the owner of one of these lots testifies to a value of \$80.00 per foot; the expert for the second owner testifies to a value of \$60.00 per front foot, and the expert of the third owner testifies to a value of \$40.00 per front foot, and the hearing Board member is familiar with this block and knows of his own knowledge and judgment that the value of each of these lots is \$20.00 per foot; in these cases the hearing Board member feels that he is bound to enter a judgment in one case at \$80.00 per foot, in the second case at \$60.00 per foot, and in the third case at \$40.00 per foot; it will be noted that each of these cases is tried as a distinct separate entity, unrelated to the other, and is decided accordingly on the uncontradicted testimony of the

taxpayer's respective experts, without regard to the hearing Board member's own knowledge or judgment, and without regard to the lack of uniformity created thereby, and without regard to the fact that at least two of these judgments must be wrong (and possibly the three) on the question of the true value of the property; and here again, the six Commissioners seem to agree that the law so limits and binds them. It appears that in undefended cases they do not use, and feel that they can not use, their own knowledge and judgment as to the value, but that they are bound, absolutely, by the testimony of the expert of the one side which produced the testimony.

In contested cases they state that they do use their own knowledge and judgment but only to the extent of putting the probative value upon the conflicting testimony, and even in those cases they do not use their own independent knowledge and judgment; they view and inspect the property under appeal but that they do this only for the purpose of being able to put a probative value upon the testimony in contested cases only (namely, in cases where there is conflicting testimony on both sides). By probative value they mean the credibility or weight they attach to the conflicting testimony of the experts in these contested cases. Likewise, in contested appeals involving income producing property, they use their own knowledge and judgment, only upon the testimony in deciding upon the extent of weight or credibility which should be given to the experts' conflicting testimony of value.

In appeal cases, where the taxpayer does not appear and produce any testimony, the State Board judgment will be the valuation testified to by the City's expert, regardless of the Board members own knowledge and judgment, or of the value fixed by other State Board judgments in contested cases on the same or similar property (or of the lack of uniformity thereby created) and regardless of whether said judgment be more or less than the true value of the property. In such cases the State Board judgment will not exceed the original City assessment, or the valuation stated in the City's petition of appeal, whichever be lower, as the State Board feels it has no power to increase the original City assessment, and also it has no right to grant more than prayed for in the appellant's petition.

The six members who hear these real estate appeals feel that the State Board is purely an appellate body and that they must decide cases on the evidence; that they do not undertake to conduct or manage a hearing for anybody in order to produce evidence; they feel that these would be functions of equalization which by law are vested in the State Tax Commissioner and not in the State Board.

The Commissioners testified that the decisions of the Court hold that there is a legal presumption that the original City assessment is correct until such assessment has been changed by a County Board judgment, and thereafter there is a legal presumption that the County Board judgment is correct until changed by a State Board judgment. At the hearing on appeals from the County Board to the State Board, the burden of proof is upon the appellant (whether the City or the taxpayer) to overcome the presumption that the County Board judgment is correct, and the State Board hearing is a trial de novo and that, in each case, each appeal is a separate entity (independent of any other case or appeal) and must be decided on its merits, and that they have been proceeding accordingly.

It was pointed out, also, that State Board hearings are very frequently only a complete repetition of just what took place at the previous County Board hearings, including testimony, etc., so that there is a double trial, in many cases, with the same witnesses.

It was testified to that the County Boards may use their own judgment and knowledge as they are a local body and assumed to be conversant with the property, and they have powers beyond those of the State Board, namely, they have the power and duty to equalize valuations and to revise and correct assessments, and that none of such powers reside in the State Board, but even as to the County Boards, it was testified that when sitting as an appellate body, they have no right to use their own independent knowledge and judgment except to put a probative value upon conflicting testimony in contested cases.

The testimony produced at these hearings as to the value of the property is opinion evidence; the witness is a licensed real estate broker of the State of New Jersey who qualifies by showing his experience and relevant knowledge of sales and other transactions in real estate; he bases his opinion or conclusion as to the value of the particular property under appeal, upon this knowledge and experience, as well as upon other knowledge he has gained through hearsay (as to transactions in which he did not actually participate). The value of real estate is therefore a matter of opinion—it can not be reduced to mathematical certainty; experts often differ widely as to the value of a particular property; in these appeals the municipalities often employ the same experts, more or less permanently, and they are probably compensated upon some regular or fixed basis, whereas, in the case of the taxpayer, his expert, as well as his attorney, may in many cases, be compensated upon a contingent basis dependent upon the result of the appeal. This situation is generally known and it must be assumed to be known by the State Board members who hear these appeals.

State Board Judgments Entered on Consents of Taxpayers and Municipalities.

11. As to State Board consent judgments, the parties, the taxpayer and the City, or their attorneys, are really fixing the value and fixing the amount of the judgment. The State Board members feel that under the law they have a right to enter such judgments and have been advised by a written opinion of a former legal assistant to the Board that the State Board may, in its discretion, accept stipulations as to questions of fact but not as to question of law. (There is nothing in the Statute on the question except the aforementioned R. S. 54:2-41 which applies to the correction of errors or mistakes where the taxpayer and the mayor or assessor of a municipality have agreed in writing to the correction, which Statute does not apply to this particular situation.)

The only fact covered by these stipulations and consents is the value of the property agreed upon by the City and the taxpayer—that fact is a conclusion—no fact is covered therein or thereby which could be the basis or premise for that conclusion.

Rule IX of the State Board provides that the parties may, by stipulation in writing, signed by the parties or their attorneys, filed with the

Board, or in open hearing, agree upon any of the facts involved in the appeal. The said stipulation, if in writing, shall be filed with the Board. While the last sentence in this rule implies other than written stipulations, the rule does not permit oral stipulations or consents. This rule seems to imply something more than an agreement as to the one conclusion or fact of value—the words “any of the facts involved in the appeal” seem to so indicate.

The Essex and Hudson County Boards do not permit the City and the taxpayer to independently agree upon an assessment reduction of more than \$500.00, and in all cases stipulations must be in writing and the parties must appear and sign same at the hearing.

Due to the large number of appeals filed with the State Board in recent years, it would be practically impossible to try them all and the testimony indicates that the trial of all cases might occupy the Board every day in the year and perhaps many nights, and that, in the opinion of the members, consent judgments are necessary as well as proper and legal. This practice of entering State Board consent judgments is not new, but is of many years standing long antedating the membership of all the present Commissioners.

In his testimony, and by previous written communications or dissents filed with the State Board, President Waesche is in strong disagreement with his colleagues on this question; he believes they are convinced that they are acting legally in these cases; he believes that the Board may accept written stipulations of facts provided they set forth facts upon which the State Board may be able to decide intelligently as to the value, and that the conclusion as to value should be that of the Board and not that of the parties. He advocates that there should be submitted to the Board an affidavit of at least one expert—that at least one expert should be sworn at the hearing to testify that he has read the stipulation and affidavit, and that the facts and the conclusion of true value therein stated are correct. His point is that the State of New Jersey has an over-all interest in these cases and in having State Board judgments represent true value, and that the State Board represents the State and that the State is, and can be, represented by no one but the State Board in the disposition of these cases.

President Waesche also disputes the conclusions of the other members as to the legal presumption of correctness of original assessments and assessments fixed by County Board judgments in cases where it is known that City assessments on land have not changed between 1929 and 1942, inclusive, and where in years prior to 1942 the County Board granted no hearings on appeals but affirmed all City assessments; he stated that this condition and the knowledge of it destroys any such presumption of correctness. He testified also that in his opinion uniformity and true value go together.

The hearing members do not follow the decision in Harborside, etc., vs. Jersey City, 128 N. J. Law 263 (affirmed by the Court of Errors and Appeals in 129 N. J. Law 62), which decided: “It is a proper function for the State Board of Tax Appeals to use its own knowledge and judgment in appraising taxable value of property, and for such purpose it may view the property, that the Commissioners cannot be cross-examined on knowledge they thus obtained; that it is of help to the board to view the property for the purpose of evaluating the testimony as is true of any fact finding body, and

that moreover, the cases hold that it is a proper function for the board to use its own knowledge and judgment in appraising the taxable value of property." The Court therein cites the United N. J. R. & Canal Co. case in 100 N. J. Law 131, decided May 19, 1924, and the Long Dock Co. case in 86 N. J. Law 592, decided November 16, 1914. The hearing Commissioners feel that this decision is not controlling upon them because the cases cited therein apply to a time and a different situation when the State Board was a board of assessors as well as an appellate body and that the right of the Commissioners to use their own knowledge and judgment applied to their then powers as assessors and not as to their powers as an appellate body. They also refer to other decisions which they feel compel them to decide each individual case, as a separate entity, entirely upon the evidence in that particular case, and without use of their own knowledge and judgment.

State Board Judgments Higher than True Value.

12. There is some evidence of sales which, though a limited or spot check, indicates that consistently over a period of years, the sales prices were far below the valuations fixed by State Board judgments. This condition was common among municipalities generally since 1929 and it must be assumed that the State Board members were aware of it, and also aware of the fact that it was at least equally as common in a municipality which had not reduced land assessments between 1929 and 1943, and accordingly, that State Board judgments, particularly those entered before November 30, 1942, were considerably higher than the true values of the properties (the land).

The State Board members must be assumed to have known, generally, as well as by tax histories, or otherwise, of the extent to which Newark reduced its land assessments between 1929 and 1942, and of the fact that the Essex County Board of Taxation continued through the years to further reduce Newark land assessments—and it has been shown that the State Board by its judgments in Newark appeals for the year 1941 reduced the Essex County judgments for that year by an amount which represented reductions of 43% upon the amounts of the Essex County Board's valuations (on the same properties) for the year 1937—and that at the same time the State Board judgments reduced the Hudson County Board judgments for 1941 (which were practically the same as the original 1929 City assessments) by an amount which represented reductions of 16% upon the amount of the Hudson County Board's valuations (on the same properties) for the year 1937 (which again were practically the same as the original 1929 assessments).

These explanations as to how State Board judgments result in lack of uniformity and valuations not at true value do not seem to apply to any appreciable extent to Jersey City appeals so far as same concern consent judgments since few consent judgments have been entered in Jersey City appeals and, from the testimony, it would appear that that City rarely fails to appear and produce testimony at the hearings, although there may be some cases where the taxpayer fails to appear.

In the five-year period—1939 to 1943, inclusive—less than one-eighth of one percent of State Board judgments were reviewed by the Supreme Court, and in more than a majority of those cases the State Board judgments were

affirmed; this is not of particular significance in view of the few cases so reviewed.

It is clearly indicated that Jersey City land assessments were excessive and above true value for the years preceding 1943 and that State Board judgments (generally) unduly upheld such excessive and above true value assessments; this conclusion, as to State Board judgments, is particularly, and more definitely, and to a far greater extent, justified as to judgments which were entered by the State Board prior to November 30, 1942, and as to those judgments which were entered upon the reports of Commissioner Sharp during said last-mentioned period.

As to such State Board judgments entered after November 30, 1942: (a) those entered upon reports of Commissioner Smith (including his Hoboken appeals also) appear to be subject to the same criticism as those of Commissioner Sharp, although to a lesser extent; (b) those entered upon reports of Commissioners Kreamer and Harrigan appear to be much alike, to have granted the greatest reductions, to be the nearest approaches to true value and to provide no definite or certain basis for criticism; (c) those entered upon reports of Commissioner Huegel show reductions less than those of Commissioners Kreamer and Harrigan but considerably more than those of Commissioner Smith and to provide some basis for criticism although to a much lesser extent than those of Commissioner Smith; (d) it will be noted that all such State Board judgments entered from and after March, 1944, wiped out substantial portions of the reductions which had been granted by the Hudson County Board.

Condition of State Board re Relations between President Waesche and Other Members of Board.

13. President Waesche, besides presiding at the meetings of the full Board, has been hearing railroad tax appeal cases, exclusively, since his appointment, and therefore does not hear the ordinary real estate appeals heard by the other six Commissioners. For many years only one member of the Board was a lawyer and he has heard the railroad cases. When the Board membership was increased from five to seven in 1936, the Act provided that at least two members should be lawyers. President Waesche and Commissioner Kreamer are the legal members.

A large part of the testimony in this investigation has been devoted to the relations between President Waesche and the other Board members (other than Commissioner Kreamer). In some of these situations where there has been division, dissent and controversy between President Waesche on the one hand and Commissioners Harrigan, Huegel, Sharp and Smith on the other, notably in the Guardian cases and the railroad cases, and in some other instances, President Waesche and Commissioner Kreamer have been on the same side. While the views of President Waesche in some State Board matters have differed from those of Commissioner Kreamer, there appears to have been no dissent or controversy between them. President Waesche has made it clear that he has had complete confidence in the decisions, reports and work of Commissioner Kreamer at the same time that he has made it very clear that since the Fall of 1943, he has lost confidence in the decisions, reports and work of Commissioners Harrigan, Huegel, Sharp and Smith. He has testified that he found the decisions and

reports of Commissioner Kreamer to be very conscientious efforts and close to his own opinions of true value and that they varied greatly from the reports of the other four members, and that Commissioner Kreamer might hear cases in the same block but his reports were substantially different as to value than those of the other four members.

President Waesche has taken very definite positions, in a positive manner, by statements at Board meetings, by letters, dissenting opinions and written statements filed with the State Board, and by giving some of them to the newspapers. By some of these statements and writings he has strongly opposed or condemned the actions of Commissioners Harrigan, Huegel, Sharp and Smith as members of the Board, partly in connection with their actions on the appeals of the Central Railroad Company and the Pennsylvania Railroad Company for the year 1943 and in other railroad cases, and because of their decisions and reports in Jersey City real estate appeals, and has, with their knowledge, made investigations of appeals heard by them affecting Jersey City properties.

It appears that this division between President Waesche and the other four members mentioned was brewing prior to the early Fall of 1943, but that it came to a head in October of that year when he presented to the Board his report in the Central Railroad case, and from then on it increased and widened progressively, and became acrimonious. About October 22, 1943, he mailed to the other Board members copies of his report and opinion in the 1943 Central Railroad case, which report and opinion was presented to the Board at its meeting of October 26th of that year. By that report he reduced the railroad assessments which had been fixed by the State Tax Commissioner. He had sat alone in the hearing of this case daily, for several months. The transcript of testimony consisted of about four thousand pages, and there were over 178 Exhibits which appear to be voluminous and complex. The Exhibits remained in the possession of President Waesche throughout the hearings and thereafter except while they would be at the State Board office overnight or over the week-end between hearings, and except that they were presented at the Board meeting with President Waesche's report and opinion. At the Board meeting on October 27, 1943, his report and opinion were discussed, and thereupon Commissioners Harrigan, Huegel, Sharp and Smith and former Commissioner Hoff voted to affirm the original assessments fixed by the State Tax Commissioner in the 1943 Central Railroad case, with President Waesche and Commissioner Kreamer voting against that motion. This constituted a rejection of President Waesche's report.

The five lay members of the Board who had so voted on October 27th, believing that it was necessary to file a written opinion in this case, for the reason that opinions in railroad cases had theretofore been filed in writing, and that a written opinion was also necessary because railroads practically always appeal to the Supreme Court on State Board decisions, and not being lawyers, or possessing the legal knowledge necessary to cover in an opinion the legal questions involved as they felt they should be covered, and in order to have their views and decisions formulated in legal phraseology, according to their testimony, thereupon, on or about October 27, 1943, engaged Joseph L. Lippman, Esquire, of Newark, a lawyer who had practiced extensively before the State Board in tax appeals generally, and who had been retained by the Board to compile the tax laws of New Jersey in 1938 and the anno-

tated opinions of the State Board in 1939, and who was known to the said members of the Board to be an expert in the field of taxation, to write this opinion for them. These five members testified that they had read the testimony of the hearings of that case as it was furnished from time to time, and that they had heard the argument of counsel and had read the briefs of counsel, but they did not have the Exhibits, and on November 2, 1943, Commissioner Smith got the Exhibits from President Waesche in Teaneck and told him he was getting them for Mr. Lippman so that the latter might write an opinion for the majority. Mr. Lippman wrote the opinion which is a 38-page document covering the facts and the legal questions in an apparently careful, complete and thorough manner, and, according to the testimony, this opinion was mimeographed by Saturday, November 6, 1943, and was filed in the State Board meeting of November 8, 1943. President Waesche has contended that it would have been impossible for a stranger to the case to have written this opinion particularly without sufficient time to study the Exhibits which he stated to be exhaustive and complex, and to require long and careful study, and that the time between November 2nd or October 27th and November 6th would have been wholly inadequate for that purpose.

President Waesche issued a written report to the State Board on January 4, 1944, copies of which were given to the newspapers, in which he discusses the said Lippman opinion in the Central Railroad case and stated that many statements therein are not supported by the evidence; and that great portions thereof seem to be based on evidence not contained in the record of the hearings and on things not seen nor heard by any of those five Commissioners, and that it is obvious from reading the opinion that it was written by a lawyer who had been present at the hearings which had previously been held by the State Tax Commissioner as well as by one who was thoroughly familiar with the hearings before President Waesche, as well as familiar with the record of the hearings on appeals of the same Railroad Company for 1939 and 1942. President Waesche makes the further statement and charge that from his study of the said Lippman opinion and his knowledge of the proceedings in both the 1942 and 1943 appeals, he does not hesitate to state that he is reasonably sure that this opinion was written by Mr. Milton Conford, who had represented the Attorney-General in the 1943 railroad tax appeals on first- and second-class properties to which the City of Jersey City was also a party. He stated he could identify this opinion as written by Mr. Conford by his characteristic mode of expression; by his customary use of particular words and phrases and parenthetical words and phrases, and by many distinctive sentences used, by the points of argument raising both legal and fact; and by the reasoning used in support thereof, and that only Mr. Conford was in a position to write that opinion because of his familiarity with the case and the prior case before the State Tax Commissioner and with the record in the 1939 and 1942 cases.

On the following day, January 5, 1944, the five lay members issued a report addressed to the Governor and Members of the Legislature replying to President Waesche's report of the previous day (in the preparation of which Mr. Lippman participated), in which they denied his charge that the opinion was written by Mr. Conford, and several other statements contained in President Waesche's report, and set forth that the opinion was

their own opinion and that Mr. Lippman was engaged as a legal assistant to assist them in formulating their conclusions and opinion. Reference was made therein to the 1942 Central Railroad appeal which the State Board unanimously decided on President Waesche's report, he having heard the said case, and by which the 1942 assessments made by the State Tax Commissioner had been reduced and, as to which, President Waesche, supported by Commissioner Kreamer, had taken the position that the Statute which fixes a time limit upon the State Board to decide railroad appeals, is mandatory upon the State Board. R. S. 54:29a-34, to which President Waesche refers, reads: "The State Board of Tax Appeals shall conclude its hearing . . . on or before the first day of November following the filing of the complaint and between November 5th and November 10th following shall certify to the State Tax Commissioner its final determination." The five lay members (including former Commissioner Hoff) stated that as to the 1942 Central Railroad case, they had gone along with President Waesche's report blindly, without having read the testimony or the Exhibits, because he informed them that this provision of the railroad tax law was mandatory, and the State Board must decide before November 10th. During the course of my investigation the Attorney-General, in railroad appeal from the State Board judgment, took the position that this act is not mandatory upon the State Board but is directory, and that the State Board may enter an effective judgment after November 10th.

That following the State Board judgment in the 1942 case there was considerable objection to the reduction made thereby, and in the Spring of 1943, at the request of Attorney-General Wilentz, the State appropriated \$75,000.00 to upset that judgment and restore the 1942 State Tax Commissioner's valuations. That in the months following the 1942 decision they had studied the testimony in that case. It appears that during the progress of the 1943 case, through the Spring, Summer and early Fall of 1943, President Waesche reported to the Board on the progress of the hearings, from time to time, but there is no evidence that prior to October 27, 1943, when the 1943 Central Railroad case was decided, that the five lay members (including former Commissioner Hoff) ever made known to President Waesche their change of mind as to the 1942 judgment.

The next step in these matters is shown by the Board minutes of the meeting of November 8, 1943, when the Lippman opinion of the majority in the 1943 Central Railroad case was filed, and at which meeting President Waesche presented his report in the 1943 Pennsylvania Railroad cases, in detail, and gave his views as to the testimony, Exhibits, sales, etc., in support of his valuations and recommendations.

At this meeting, Commissioner Huegel produced a memorandum which he admitted had been prepared for him by Mr. Lippman, which was read, which was to the effect that the time limit to November 10th of the Railroad tax law was not mandatory upon the State Board, but merely directive, and that the State Board was not compelled by law to act in such Railroad cases before November 10th but could render its decision thereon at a later date. The five lay members (including former Commissioner Hoff) stated that they had been misled in the 1942 Railroad case and they were satisfied that the legal advice they now had was correct, and that they could not decide or vote intelligently in the 1943 Pennsylvania Railroad case without reading and studying the testimony and Exhibits, which would take considerable time.

Commissioner Huegel introduced a resolution that the State Board withhold its decision in the 1943 Pennsylvania Railroad case to give time to study the testimony and Exhibits, upon which motion President Waesche and Commissioner Kreamer cast the only negative votes.

A resolution was also passed to ratify the employment by the majority members of Mr. Lippman to write the 1943 Central opinion and to authorize the majority members to engage him to write the opinion in the 1943 Pennsylvania Railroad cases.

At this same meeting, the State Board took action on other pending Railroad appeals by affirming the reports of President Waesche in all 1943 Railroad cases in which President Waesche had recommended the affirmance of the assessments fixed by the State Tax Commissioner, and at the same meeting, other pending Railroad appeals which had not been heard (on which testimony had not been taken) were dismissed, on the ground that it was then too late to hear them because of the time limit fixed by the Statute. (Such dismissals had the effect of affirming the assessments made by the State Tax Commissioner.) Other testimony and Exhibits in my investigation show that other pending Railroad appeals, which had not been heard, were dismissed by the Board, at other times, including those dismissed in January and March, 1943, on the ground that the hearings had not been held prior to the expiration date provided by such Statute (which likewise operated to affirm the State Tax Commissioner's assessments). The testimony also shows that judgments in other Railroad cases, at various times, had been entered by the Board upon reports of the hearing Commissioner where the other Commissioners had not heard any evidence or argument of counsel. The State Board, by judgment entered on May 26, 1942, in the case of the Central Railroad first- and second-class property appeal for the year 1939, in which Jersey City filed an appeal against a 10% reduction which had been made by the State Tax Commissioner, and which concerned the same property as the 1942 and 1943 appeals of that Railroad Company, had set aside the said 10% reduction made by the State Tax Commissioner and increased the assessment for that year accordingly.

Mr. Lippman wrote Mr. Waesche in reply to a letter from the latter, that the opinion he wrote in the Central 1943 Railroad case did not represent his conclusions, but represented the thoughts, statements and conclusions of the five members who approved the language thereof as expressing their conclusions. In the answer of the five lay members (including former Commissioner Hoff), addressed to the Governor and the Legislature, of January 5, 1944, they refer to the employment by President Waesche of Professor Lutz of Princeton University, a noted authority on Railroad tax matters, and Mark A. Sullivan, Esquire, a well-known lawyer of Jersey City (in whose office President Waesche had studied some years ago) and who had been paid for those services, and that Professor Lutz had received copies of the transcript of testimony in the 1943 Central case. President Waesche explained that he talked with Professor Lutz two or three times in a general way on general economic questions involved in Railroad taxation, and that he consulted Mr. Sullivan on some legal questions, but that neither Professor Lutz, nor Mr. Sullivan, wrote any part of his opinions, nor did he adopt any opinions except his own, and that everything in his opinions represented his own independent conclusions.

Mr. Conford testified at length and submitted a memorandum consisting of ten pages of excerpts taken from the 4,000 pages of testimony of the 1943 Central Railroad hearings, together with his comments or interpretations thereof, which comments or interpretations in most cases appear to be uncomplimentary to President Waesche. Some of these excerpts do indicate some impatience and an occasional lack of judicial temperament on the part of President Waesche. In the absence of the complete transcript of testimony in these hearings, which was not relevant to any purpose of my investigation, it is impossible to know of any provocation or conditions which might have justified or explained some of these excerpts. From them it does appear that at times President Waesche fell short of perfection in judicial patience and temperament, but from all of the evidence in my investigation, there is reason to believe that he had considerable provocation, from the actions of Mr. Conford and the counsel of Jersey City, the latter having requested President Waesche to disqualify himself as prejudiced. I feel there is no reason to believe that litigants in this case were deprived of any rights. The interpretations of Mr. Conford indicate a very keen personal dislike or displeasure.

During these 1943 hearings, Mr. Conford appeared for Attorney-General Wilentz to uphold the State Tax Commissioner's assessments, and Jersey City, which was a party, opposed the Railroad's petition for a reduction and sought to increase the assessments which had been fixed by the State Tax Commissioner. President Waesche stated that Mr. Conford's excerpts misrepresent the record. Mr. Conford had been Legal-Assistant to the State Board from 1938 to January, 1943; he denied that he wrote the 1943 Central Railroad opinion or that he had anything to do with it. He stated that he filed a brief, a copy of which had been received by every member of the State Board, and that he found the Lippman opinion to be practically a paraphrase of arguments contained in his brief; that there are parts of said opinion which are verbatim out of his brief. President Waesche stated that not a single quotation in the Lippman opinion is from said brief, and asked Mr. Conford to point to anything in said opinion which was taken verbatim from said brief, and Mr. Conford referred to page 7 of the brief which is a citation of law—he stated he could not point out any part taken verbatim other than citations of the law without making a careful recheck and comparison.

That since August, 1942, while representing Attorney-General Wilentz in the litigation to upset the railroad tax settlement act, he had been paid by Jersey City for his legal services in that litigation. Mr. Minard asked him if it wasn't customary for a City which was the relator in such litigation to pay the expense, to which Mr. Conford replied that the Attorney-General was, in his opinion, not just a nominal party to that litigation, but was a real party thereto. That the State of New Jersey would not pay his fee because there was no appropriation, and besides, the Governor, the Legislature and other State officials were on the other side and had retained their counsel to uphold that act.

Mr. Conford testified that he was then (November, 1944) retained by Jersey City which was paying him in litigation to recover Railroad taxes in which Jersey City was heavily interested, and that he was paid by Jersey City for legal services in 1943 and 1944. That Jersey City is, and has been, one of his clients which he has been representing as a lawyer;

that he is not, and never has been, on its staff. He stated that he knew President Waesche would accuse him of having written the 1943 Central opinion and that he discussed it with Mr. Lippman around January 4, 1944, when President Waesche's report aforementioned appeared in the newspapers.

The original handwritten statement of the majority members of January 5, 1944 (which denied that Mr. Conford had written the Railroad opinion filed November 8, 1943), was (at my investigation) shown to Mr. Conford, and he was asked if any of the interlineations therein were in his handwriting, to which he replied: "Those (pointing to a place therein) are my interlineations. Some of them are. Now, wait a minute. It looked like my handwriting when I first looked at it. No, they are not mine, nor anybody's that I recall."

He had long before given Mr. Lippman a full and complete idea of what had happened at the 1943 Railroad hearings; that he had told him of his reactions thereto; that Mr. Lippman was a close friend of long standing; that he (Conford) knew the Board majority was preparing an answer to President Waesche; that he may have talked with the Board members about it; that he was naturally interested in what was going on.

That he talked with Board members and made criticisms and complaints of Waesche as to the Railroad hearings before January, 1944, and probably while the case was pending; that he knew Mr. Lippman was engaged to write the majority opinion; that matters in the opinion and in the statement of January 5, 1944, might be based upon such prior talks of his with Mr. Lippman. That he loaned to Mr. Lippman, at the latter's request, the Exhibits in the 1943 Central Railroad case a couple of weeks before the opinion was filed, and before November 2, 1943, when Commissioner Smith got them for Mr. Lippman from President Waesche. (Commissioner Smith testified he got these Exhibits for Mr. Lippman so that he could write the opinion and he delivered them to Mr. Lippman immediately.)

Mr. Conford wrote a letter to President Waesche on August 9, 1943, at or towards the close of the hearings in the 1943 Central Railroad case which reads as follows:

"Dear Donald: Having had time to reflect on my recent adventures in Trenton, and to reread parts of the record in the C. R. R. case, I have felt a compulsion to sit down, as I am doing, and to impart to you my resolution to try to do what I can to convey to you in the future a better impression of me.

"I am genuinely distressed at the feeling that the fine personal relationship which existed between us when I was with the Board is going a-glimmering. It shouldn't be. There is no reason in the world why the performance by each of us of our respective duties in as honest and hard-fisted a manner as we are capable of should interfere with a friendship which I, at least, sincerely value, and should hate to see cool.

"I appreciate that there were times during the hearings when my earnestness may have seemed to amount to disrespect. Please accept my assurances that it was never so intended. It is only, I suppose, that some Irish is mixed with the Jewish in me, and that

my zeal for the cause which I represent and my anxiety to see it prevail caused me at times to say or do things not reflective of my personal regard for you, to say nothing of the Board.

"While I shall try in the future to do my darndest to succeed in the position which I am directed to take in these cases, and to convince you and the Board that we are right, I hope to do so in a way to which no one can take offense. I know that you have no other purpose than to do what you think is right, and I ask you, for the sake of old times, to reflect upon my endeavors charitably, and to give me the benefit of the doubt as to my good faith and of my fundamental respect for your position and self, whatever my disagreement with some of your views on the subject of railroad valuation and taxation. Very sincerely,"

The only proof of President Waesche's public charge that Mr. Conford wrote the Central Railroad opinion, is circumstantial, but the circumstances seem to warrant President Waesche's suspicion if not to prove the charge. If this opinion was not the work of Mr. Conford's hand, it fully expressed his mind and sentiments, as did the majority group statement of January 5, 1944; his shadow was all over both and he was the source and the origin of much of the contents (of each) which the majority Board members, and their legal assistant, could not have gotten from the briefs and the record in the case. He appears to have been in close touch with the parties engaged in preparing these documents immediately prior to their preparation and to have been co-operating with them and fully informed and interested even though he may not have actually or directly participated in the writing or composition thereof.

In deciding the 1943 Central Railroad case on October 27, 1943, and in hurrying the preparation of the opinion and filing it on November 8, 1943, it is indicated that the majority (lay members) felt up to that time the statutory time limit (November 10th) was mandatory.

As to the 1943 Pennsylvania Railroad appeals, the majority decided them on April 25, 1943, at which time their opinion, prepared by Mr. Lippman, was filed and Judgment entered against the opposing votes of President Waesche and Commissioner Kreamer—this decision affirmed the State Tax Commissioner's assessments except in a few minor instances, and represented a reversal of President Waesche's report and recommendation—in this case, also, Jersey City and Hoboken were parties in opposition to the Railroad's petition for reductions and in an effort to raise the State Tax Commissioner's assessments.

On May 15, 1944, the Board proposed that three members sit in Railroad cases—President Waesche informed the Board that he would sit with Commissioner Kreamer or with the entire Board but would not sit with any two of Commissioners Sharp, Hoff, Harrigan, Smith or Huegel; he testified that he observed during the 1943 Railroad hearings that Mr. Conford and the Counsel for Jersey City worked together, and that their policy was to delay hearings and embarrass him; that some of the testimony which he had excluded at the hearings was (during the hearings) referred to the State Board and the Board allowed it; that he became convinced that the majority Board members were acting in accordance with the wishes of some one outside the Board. Commissioner Kreamer testified that Presi-

dent Waesche had not insisted upon sitting alone in Railroad hearings; some of the other Commissioners testified that he had so insisted.

I did not go into the question of the merits of the Railroad decisions in considering the actions of the Board members preceding and following the same and in connection therewith—and, of course, I do not pass upon the correctness or error of those decisions—or as to which side may have been right or wrong as to the Judgments entered therein, as that is a legal conclusion for the Courts—and is not material to my investigation.

In the late Fall of 1943, President Waesche told Commissioners Harrigan, Huegel and Smith that he had lost confidence in their reports for judgments in Jersey City appeals, and that he intended to investigate a large number of Jersey City cases which they had lately reported, and asked for transcripts of the testimony taken at those hearings, and he withheld voting thereon until he had completed such investigation. Entry of judgments were withheld in these cases for several weeks, and after some delay President Waesche was furnished with many of the transcripts requested. His investigation covered several months and before it was completed the judgments had been entered.

On February 15, 1944, he filed a dissenting opinion on the hearing reports of Commissioner Smith on 500 Jersey City appeals which had been submitted to the State Board on December 22, 1943, covering 1941 assessments. In the transcript of the meeting of the State Board of February 15, 1944, admitted as an Exhibit in evidence, covering a heated discussion between President Waesche on one side and the other members (except Commissioner Kreamer) on the other, it is indicated very clearly from the statements of Commissioner Huegel (in general defense of the judgments criticized) that he favored and had been following a policy of gradual reductions in Jersey City, and that his valuations have been too high for that reason, and that he felt that any other policy (reductions to true value) would wreck the City; while the other Commissioners did not specifically refer to the same point there was general condemnation of the position of President Waesche and no questioning of the position of Commissioner Huegel, on the part of Commissioners Harrigan, Smith, Sharp and Hoff.

Later, President Waesche filed a dissenting opinion on the hearing reports of Commissioner Huegel on 765 Jersey City appeals which had been submitted to the State Board on December 7, 1943, January 4 and February 1, 1944, against assessments for 1941.

On June 13, 1944, he filed a dissenting opinion on the hearing reports of Commissioner Harrigan on Jersey City appeals which had been submitted to the State Board on March 28, 1944.

In these three dissenting opinions, President Waesche charges that the valuations fixed by the reports of these three hearing Commissioners are far higher than true value and are not uniform—and strongly condemns their reports. In each opinion he sets forth a number of the cases involved with particulars as to each—matters of income, sales, etc., and recites the valuation reported and what he has found from his investigation to be the true value. Generally he condemns the reports of these Commissioners as being discriminatory and as fixing unjustifiably excessive valuations.

He testified that he made very careful and detailed investigation of the properties and appeals covered by these dissenting opinions over a period

of several months, and that his conclusions of value were based upon (1) his own personal knowledge gained from his experience in practicing law in Jersey City for many years and being very familiar with the City—and from many tax appeals, condemnations, sales and mortgage transactions in which he, as a lawyer, had been engaged over the years and from his first-hand knowledge of particular properties; (2) information gained from newspapers and from real estate brokers and from an inspection of the properties; (3) that he read the hearing testimony transcripts in many of the 500 cases furnished to him; that he checked all newspaper information and data furnished by real estate brokers carefully; that the only information he got from the latter was reports on selling prices of the properties involved or nearby comparable properties; that he consulted County Board judgments and records but did not adopt those judgments.

Since the late Fall of 1943, President Waesche has not been voting for judgments based upon reports of Commissioners Harrigan, Huegel and Smith in Jersey City cases.

Commissioner Harrigan replied to President Waesche's dissenting opinion relating to the former's reports and explained some of his decisions and pointed out that some were due to nonappearance of a taxpayer, to reconciling conflicting testimony, to deciding on income and expenses and generally to deciding upon the evidence produced.

Commissioners Harrigan, Huegel and Smith requested President Waesche to sit down with them and discuss these cases which he had criticized, and a motion was adopted to that end but no such meeting was held.

President Waesche stated he took Commissioner Sharp out of Jersey City hearings and had her assigned to Newark—he testified that there had been a great deal of dissatisfaction with her Jersey City decisions which came from appellants and people generally—that this was general knowledge in Jersey City and elsewhere—that he heard it in the corridors of the State House—and from every lawyer that he knew, who had ever commented on the matter who had had appeals in Jersey City, and that this condition in the State Board and dissatisfaction over it went on for many years. President Waesche, in response to questioning, did not specify any particular person who had so complained—he stated he could name almost anybody he knows—that it was common knowledge—that excessive Jersey City assessments, mostly on land, were affirmed, generally by Mrs. Sharp.

That the acrimonious or unpleasant relations between President Waesche and the other Commissioners (other than Commissioner Kreamer) began in the Fall of 1943, but that the Central Railroad case was not the only cause.

Commissioners Harrigan, Huegel, Sharp and Smith have very deeply resented the criticisms and attacks and implications contained in his letters, written statements and dissenting opinions filed with the State Board and, in some cases, given to the newspapers and the check and investigation of their actions which he has made, and the manner in which he has made them, and his blunt expressions impugning their integrity and his clear and definite expressions of complete lack of confidence in their decisions in Jersey City appeals—and his implications or charges that they were working with, or dominated by, Jersey City or other outside interests; they

resent all this and charge that it is based upon suspicion and not facts, that it is all untrue and without any basis, and that it results from his political hostility to Jersey City officials.

Commissioner Kreamer went on record at a State Board meeting to state he would not vote for judgments on any reports of Commissioners Harrigan, Sharp, Huegel and Smith in any cases where Mr. Lippman, or Commissioner Huegel's personal counsel, represented the taxpayer because he felt it was unethical and had so informed Mr. Lippman, who had disagreed with him thereon. (It appears that Commissioner Huegel's personal counsel has never appeared either as Counsel or as a party in any State Board appeals.) Mr. Lippman has appeared as attorney in many State Board appeals including a number of cases between October, 1943, and May, 1944 (during the same time that he was acting in a legal capacity for said five Board members).

Some of the judgments criticized by President Waesche appear in Exhibit No. 6—as follows:

Board Member	1929 Assessments	1941 Assessments	State Board Judgments	Per cent State Board Reductions
Smith	\$211,300	\$209,800	\$170,500	.19—
Huegel	269,500	265,700	217,800	.18
Harrigan	186,400	185,100	141,250	.24—

Going back to the opinion of the lay members in the 1943 Central case and their letter to the Governor and Legislature of January 5, 1944, the charge or implication therein, that in the 1942 Central hearings President Waesche deprived the Attorney-General of the opportunity to offer a full and adequate defense, seems to be refuted by Attorney-General Wilentz's letter to the Governor dated March 8, 1943, in which, in speaking of the 1942 Central hearings, he stated: "With respect to the Central Railroad litigation, the expense of expert proof was avoided by the State before the State Board of Tax Appeals since we were of the opinion that the proofs offered by the Railroad did not overcome the weight of the presumption that the Tax Commissioner's assessment was correct . . . and were incompetent."

Delays in Entering Judgments and Holding Hearings.

14. The testimony showed considerable delay, at times, in the reporting to the State Board by the hearing Commissioners on the hearings conducted by them so that judgments might be entered. The minutes showed many cases reported three or four months after hearings held and in some cases at much later dates. There seems to be a tendency, at times, during the year, to accumulate cases and to report on a very large number at one time. Commissioner Kreamer explained the reason for the delay in his cases, namely, awaiting decisions in pending litigation, etc. Commissioner Harrigan also accounted for some of the delays in reporting most of his cases, and he stated the same reasons would apply generally to reporting delays of the other Commissioners.

There have been delays also in hearing cases but some of this delay was due to the fact that, at the request of the County Board of Essex

County and Hudson County, the State Board held no hearings on Essex County and Hudson County appeals for about two months during the year 1942, which put the State Board back considerably on its calendar for that year. The County Boards must decide their cases between August 15th and November 15th, and the State Board is sitting between Labor Day and November 15th, and often the same municipality, taxpayers, attorneys and experts, find that cases are listed for the same day with the County Board and the State Board. The investigation during 1944 also resulted in considerable delay in hearing State Board appeals.

The testimony indicates that between 40 and 50 contested cases can be heard in one day by one Commissioner (generally including Jersey City appeals), but that in Newark 20 contested cases can be heard in one day by one Commissioner, except in the downtown Newark Central business property, where about 10 cases can be heard in one day by one Commissioner; that occasionally in an outer county one case may take all morning, but that generally in the smaller counties, there are few appeals and they take very little time—it was testified to that a hearing Commissioner can dispose of any number—as many as he can get—of consent cases at a hearing.

It was also testified to that the testimony taken down in shorthand by the public stenographer at the hearings is generally very brief.

The testimony disclosed that the State Board office was far behind, and unreasonably so, in the writing up of the docket cards and the hearing minutes, but that condition has since been remedied, and I am informed also, by the Board Secretary, that there has been great improvement, in the latter part of 1944 and particularly during 1945, in the expedition with which appeals have been heard and judgments reported and entered.

Respectfully submitted,

FRANK J. MURRAY,
Investigator and Examiner.

RECOMMENDATIONS

RECOMMENDATIONS

In the Matter of the Examination and Investigation of the management of the affairs of the State Board of Tax Appeals (now known as the Division of Tax Appeals in the State Department of Taxation and Finance) of the State of New Jersey, in so far as the management and affairs thereof have been managed and conducted by J. William Huegel, David R. Smith, Richard J. Harrigan, Thelma Parkinson Sharp, Donald M. Waesche and Albert H. Kreamer, as members of said Board.

To His Excellency, WALTER E. EDGE, Governor of the State of New Jersey:

In response to your request that I accompany my report in the above matter with recommendations which I may deem necessary or advisable, I respectfully submit the following:

First

Clearly Define Powers and Duties.

That legislation be enacted to clearly define the powers and duties of the Division of Tax Appeals (formerly known as the State Board of Tax Appeals).

To seek a definition of the powers and duties of the Division of Tax Appeals, we must examine several statutes; we must go back to the Act of March 19, 1891, and the Acts of 1903 and 1904 which created the State Board of Taxation; then to the Act of 1905 which created the Board of Equalization of Taxes of New Jersey; then to the Act of 1915 which created the State Board of Taxes and Assessment (and as to such last-mentioned Act, concern ourselves only with the portions thereof which cover appellate powers and duties relating to the review, hearing and determination of tax appeals, and exclude the portions thereof which cover administrative powers and duties relating to assessing, supervision of assessments, equalization, etc.); then to the Act of 1931 which created the State Board of Tax Appeals; then Revised Statutes 54:2-1 et seq., which merely continued the State Board of Tax Appeals, and finally to Revised Statutes 52:27b-5, which provided its present name.

A study of the powers and duties of the Division of Taxation and director of the Division of Taxation (formerly known as the

State Tax Department and the State Tax Commissioner) also requires an examination of several statutes; we must go back to the Laws of 1888 which created the State Board of Assessors; then to the Act of 1915 which created the State Board of Taxes and Assessment (and as to such last-mentioned Act, concern ourselves only with the portions thereof which cover administrative powers and duties relating to assessing, supervision of assessments, equalization, etc., and exclude the portions thereof which cover appellate powers and duties relating to the review, hearing and determination of tax appeals); then to the Act of 1931 which created the State Tax Department and State Tax Commissioner; then to Revised Statutes 54:1-1 et seq., which merely continued the State Tax Department and the State Tax Commissioner, and finally, to Revised Statutes 52:27b-48 et seq., which provided its present name.

The Act of 1915, which created the State Board of Taxes and Assessment, consolidated in the latter Board the powers and duties of both the separate predecessor Boards.

The Acts of 1931 separated the combined powers and duties of the State Board of Taxes and Assessment, transferring part of such duties and powers to the State Board of Tax Appeals, and the remainder thereof to the State Tax Department and State Tax Commissioner; this separation was brought about by general language, namely, by reference, generally, to the powers and duties of the 1915 Act which had created the State Board of Taxes and Assessment.

The 1931 Act creating the State Board of Tax Appeals provides that that Board "shall succeed to and exercise exclusively all the powers and perform all the duties concerning the **review, hearing and determination of appeals** . . . formerly exercised or performed by, or conferred and charged upon, the State Board of Taxes and Assessment, etc."

The 1931 Act which created the State Tax Department and the State Tax Commissioner provides that that department "shall exercise exclusively all the powers and perform all the duties formerly exercised or performed by or conferred and imposed upon the State Board of Taxes and Assessment, **except those relating to the review, hearing and determination of appeals** . . . etc."

This separation of the combined powers and duties of the predecessor consolidated board, by general reference, and the statutory evolution of these two departments, also by general reference, has created some uncertainty as to the powers and duties of the two departments created by the Acts of 1931, which has not been removed entirely by other legislation; this is more particularly true in the case of the Division of Tax Appeals.

Power and Duty to Use Personal Knowledge and Judgment.

Consequently, in its exercise of its powers and duties to hear and review tax appeals, is the Division of Tax Appeals (1) nothing more than an appellate court (exclusively a judicial body), or (2) a quasi-judicial body, combining, with its appellate judicial powers and duties, some of the administrative powers and duties of the former State Board of Taxes and Assessment?

The Division of Tax Appeals has been proceeding upon the premise that it is exclusively a judicial body and nothing more than an appellate court; that its only functions are the judicial functions of an appellate court to review, hear and determine tax appeals; that matters come to it on pleadings; that it deals only with litigation; that it tries cases and renders decisions and judgments; that in so doing, it is bound by the rules of evidence; that it is called upon to decide legal questions, requiring knowledge of the statutes and court decisions; that it has no right to use the personal knowledge and judgment of its members, and that each case before it is a separate and distinct entity and must be tried and decided only upon the evidence in that particular case.

Section 16 of the State Board of Assessors' Act of 1888 provided that in order to discharge their duties, the said Assessors "shall ascertain the necessary facts from the best information they can obtain, in such mode as they may find convenient, **using their personal knowledge and judgment**, etc." Members of the Division of Tax Appeals take the position that this power to use personal knowledge and judgment did not become vested in the State Board of Tax Appeals (now the Division of Tax Appeals) but did become vested, exclusively, in the State Tax Department and the State Tax Commissioner (now the Division of Taxation and the Director thereof) through the transfer to the latter department of the assessing powers and duties of prior boards, by the language of general reference aforementioned. This is one of the questions which has affected the work of the Division of Tax Appeals which might be settled by legislation defining its powers and duties.

It is to be assumed that members of the Division of Tax Appeals are chosen because of their special qualifications in experience, knowledge and judgment in matters concerning the valuation and taxation of property, particularly real property, and therefore that they should have the power, as well as the duty, to use their personal knowledge and judgment as to the value of property that is the subject of appeal in any case before them and without distinction as between contested and undefended cases, to the end that judgments may be entered according to the true value of the property in every appeal.

In view of the conviction and procedure which the members of this body have been following, in this respect, with resulting judgments, in numerous cases, admittedly in disregard of true value (and without passing on the legal questions involved), I recommend that legislation be enacted expressly conferring and imposing upon the members of the Division of Tax Appeals the power and duty to use their personal knowledge and judgment to the end aforestated.

Third

At Least Four Members Lawyers—Qualifications.

Amend R. S. 54:2-3 to read as follows: "The Division of Tax Appeals shall consist, as heretofore, of seven members, who shall be citizens of the State and not more than four of whom shall belong to the same political party. At least four members shall be counsellors-at-law of the State of New Jersey of at least ten years' standing. Members shall be chosen because of their special qualifications, knowledge and experience in matters concerning the valuation and taxation of property, particularly of real property."

The present Statute provides that at least two of the members shall be counsellors-at-law. After reading some of the other recommendations herein, and my accompanying report, I believe the need of requiring that at least the majority of the members shall be lawyers will be obvious.

The only provisions in the Statutes concerning the qualifications of members are those contained in R. S. 54:2-3, which provides that they shall be citizens of the State and that not more than four of them shall belong to the same political party, and in R. S. 54:2-5, which provides that they shall not directly or indirectly be interested in any railroad, canal or other public utility company. From other recommendations herein, and from my accompanying report, I believe it will also appear obvious that members should have the qualifications suggested by the above amendment. I deem it advisable, also, that lawyers appointed to this board should have at least ten years' standing as counsellors-at-law of this State.

The above amendment might be made more definite as to qualifications, or as to the manner of qualifying for appointment, or as to any additional qualifications.

Fourth

Salaries—Full Time.

Amend R. S. 54:2-8 to read as follows: "Each member, except the President, shall receive an annual salary of \$8,000.00. The President shall receive an annual salary of \$9,000.00. The members, including the President, shall devote their full time to the duties of the office."

As the law now stands, neither the members nor the President are obliged to devote their full time to the duties of the office. I believe it to be advisable and necessary that members should devote their entire time to the duties of the office. Under existing procedure, appeals are, in fact, being decided by only one member, and judgments entered accordingly; regardless of the practice in County Boards of Taxation, I believe that appeals before this state-wide body should be decided by more than one member, and the above amendment will not only make that possible, but will in all other respects, improve conditions.

Fifth

Four Members to Sign Judgments—Rules—Petitions of Appeal.

Amend R. S. 54:2-14 by providing that judgments shall be signed by at least four members instead of three members.

The present Statute, through inadvertence, was not so amended in 1936 when the Board membership was increased from five to seven.

Further amend or supplement R. S. 54:2-14 by giving to the Division of Tax Appeals express power to make rules covering the allegations to be alleged in petitions of appeal and the verification thereof.

The present petitions of appeal allege only the names of the parties, location of the property, only a brief general, incomplete reference to the building (such as apartment), the amount of the assessment, the amount of the County Board judgment and the amount of the appellant's valuation, which information is wholly inadequate for the hearing members and for full records of the Division.

Petitions of appeal to the Essex County and Hudson County Boards of Taxation contain full and complete information and details as to the buildings and the land, including the size of the land, description, use, etc., and include verification, by attached affidavit, as to details of income and expense in cases of income producing properties.

The above amendment or supplement is recommended for the reason that the testimony at the investigation indicated that it was the belief of members of the Division that the Division lacked the power to make rules requiring the allegations of such detail and information in petitions of appeal, and the power so to do of the County Boards was also questioned.

Also, if there be any doubt as to the power of the County Boards to make similar rules concerning petitions of appeal upon the approval of the Director of the Division of Taxation, such doubt should also be removed by legislation.

I would recommend, also, that it be provided by legislation that no appellant shall be required, in the prayer of any petition of appeal, whether to a County Board of Taxation or to the Division of Tax Appeals, to fix the value of the property, but that a general prayer therein that the assessment be decreased or increased (as the case may be) to the true value thereof, shall be sufficient. Such legislation will be in accord with the Constitution and will also avoid the cause of most amendments of petitions of appeal, and will prevent the entry of judgments for more or less than true value in many cases, as the Division of Tax Appeals has been holding the appellants to the valuations specified by them in petitions of appeal, even though the evidence at the hearing shows the true value to be higher or lower. The determination of true value is the function of the appellate board, not of the appellant.

Sixth

References to At Least Two Members—Reports of Members.

Amend and supplement the first sentence of R. S. 54:2-18 to read as follows: "The Division of Tax Appeals may, as occasion shall require, by order, refer to two or more of its members, at least one of whom shall be a counsellor-at-law, the duty of taking testimony in a matter pending before it, and to report on such matter and the testimony so taken, to the Division, but no determination shall be made therein except by the Division. Said reports shall be in writing and signed by the members, and shall include, in substance, the facts and particulars of the testimony so taken, which written reports shall be public records and open to the inspection of the public."

Under the present Statute, cases are referred to and heard by one Board member, and his report to the Division contains nothing more than the names of the parties, location of the property, the amount of the County Board judgment and the amount of the assessment determined by the hearing Board member; such report includes no reference to the testimony or any other facts, and no other report is filed with the Division except an incomplete calendar of the hearing clerk which is not treated as a public record. If members serve full time, each appeal may be heard by at least two members, and as the number of appeals decreases (as it will if some of the recommendations herein made are adopted) more than two members may hear each appeal, and eventually it may be possible for all appeals to be heard by the full board.

The report of the hearing member to the Division which I have in mind is a report in a form substantially similar to the reports of hearing commissioners of the Hudson County Board of Taxation, which are on printed forms and constitute a convenient and

permanent reference record, and which seem indispensable to efficiently perform the duties of this Division and permit the Division to vote intelligently on judgments.

While the present Act provides that stenographic notes be made of all testimony, and that such testimony shall be reduced to writing at the request of any member of the Division, there seems to be no necessity, in most cases, for incurring that expense. I might suggest that, if the hearing member shall be required to make written reports to the Division, as aforesaid, the requirement for stenographic notes of the testimony might be removed, except in special cases where the Board, or the parties, might deem it necessary. As a matter of practice, due to the large number of appeals heard, transcripts of the stenographic notes and testimony are rarely made.

Seventh

Repeal or Limit R. S. 54:2-35.

Supplement R. S. 54:2-35 by adding at the end thereof, the following sentence: "Nothing herein is intended to apply to any appeal to the Division of Tax Appeals in any case provided for by R. S. 54:2-37 or R. S. 54:2-39."

The present Statute provides that any action or determination of County Boards of Taxation may be appealed for review to the Division of Tax Appeals. This is a very general Act and was passed in 1906. R. S. 54:2-39 is the Act under which any appellant may appeal to the Division of Tax Appeals from any judgment of a County Board of Taxation and was passed in 1918 and amended in 1933 and 1944. R. S. 54:2-37 provides that a County equalization table may be reviewed by the Division of Tax Appeals on complaint of any municipality or taxpayer in the County, or on the Division's own motion, which Act was passed in 1918 and supplemented in 1934.

There seems to be little, if any, reason for R. S. 54:2-35, as the other sections, R. S. 54:2-37 and R. S. 54:2-39, seem to cover all cases of appeals from County Boards to the Division of Tax Appeals, and, therefore, if R. S. 54:2-35 be not repealed, that it be supplemented as above stated. The repeal, or said supplement, would remove any ground for claim that appeals such as those filed by the cities of Jersey City and Hoboken for the years 1943 and 1944 could be heard by the Division of Tax Appeals when not filed pursuant to and within the time provided by R. S. 54:2-37.

Eighth

Appeals to be Filed within One Month from County Board Judgments.

Amend R. S. 54:2-39 by striking out the words thereof following the word "prescribed," and substituting in lieu thereof, the words "within one month from the date on which the County Board of Taxation shall have published the entry of judgment, or within one month from the date fixed for final decisions by the County Boards, whichever date shall be the earlier, and the Division of Tax Appeals shall proceed summarily to hear and determine all such appeals and render its judgment thereon as soon as may be."

Nearly all appeals to the Division of Tax Appeals are filed with the latter body on, or a few days preceding, December 15th of the assessment year. The County Boards are obliged by Statute to complete their hearings on November 15th of the assessment year, and the present Statute provides that appeals to the Division of Tax Appeals shall be filed within one month from November 15th so that no one is obliged to file an appeal with the Division of Tax Appeals before December 15th of the assessment year. The County Board hearings begin on August 15th of the assessment year, and County Board judgments are rendered from week to week between August 15th and November 15th of the assessment year. By the above amendment, appeals to, and hearings by, the Division of Tax Appeals, should be expedited as the hearings can begin earlier and judgments rendered thereon earlier as intended by the last part of the above-quoted Statute. As to judgments entered by the County Board on November 15th, a taxpayer has only one month's time to file his appeal with the State body so that this amendment will put all taxpayers in the same position as to time.

Ninth

Copies of Judgments to County Boards—Notice of Withdrawals or Dismissals.

Amend R. S. 54:2-40 by striking out the last sentence of said section and substituting in lieu thereof the following: "A copy of the judgment of the Division of Tax Appeals shall be sent to the taxpayer, and when the judgment causes a change in the amount of taxes to be paid, at the same time, to the collector of the taxing district and the Secretary of the County Board of Taxation in which said taxing district is situated. The Division of Tax Appeals shall also give prompt notice to the taxpayer and, at the same time, to the Collector of the taxing district and to the Secretary of the County Board of Taxation, in which the taxing district

is situated, of the withdrawal and dismissal of petitions of appeal filed with the Division of Tax Appeals."

The present Statute does not require the Division of Tax Appeals to send any notice or copy of its judgments to the County Boards of Taxation, and the Division has been sending to the County Boards, not a copy of the judgments, when entered, when it sends same to the taxpayer and the collector of the municipality, but has been sending County Boards, at much later dates and less frequent intervals, a letter reporting on the judgments entered.

The present Statute does not require the Division of Tax Appeals to send copies or notices of judgments to the County Boards, neither does it require the Division to send to anyone notices of withdrawals or dismissals of petitions of appeal.

The testimony in the investigation shows the necessity and importance of the amendment recommended above.

Tenth

Limitations on Correction of Errors.

Amend R. S. 54:2-41, covering the correction of errors by consent, to read as follows: "The Division of Tax Appeals may, at any time, on written application by a property owner, with the consent of the majority of the governing body of the municipality affected, to be evidenced by a true copy of a resolution adopted by such governing body, certified by its clerk, correct errors and mistakes in tax assessments; provided, that such application and resolution shall set forth the facts causing and constituting the error and mistake sought to be corrected, and that such facts be verified by affidavits of the property owner and the assessor of such municipality, respectively.

"The Division may require such further proof and grant or deny such application as it may deem necessary or proper."

While the Division has not entered many judgments under this statute, it has proceeded in the belief that the Statute was practically mandatory provided the assessor consented, and such judgments have been entered without verification of facts, without testimony and without notice to the municipality. In one recent case the municipality appealed such a judgment to the Supreme Court—in that case the assessor had consented notwithstanding the known opposition of the governing body.

The present Statute permits entry of judgments, at any time—in the cases where judgments have been entered it appears the only error or mistake was the failure to file an appeal, in time, with the County Board and the State Division, or

The above amendment is necessary to clearly and definitely limit the application of this Statute to special cases.

Eleventh

Amendments of Petitions—As of Course.

That legislation be enacted to provide that amendments to petitions of appeal, or amended petitions of appeal, may be made and filed at any time at or before the hearing of the appeal, without notice, and as a matter of course.

The procedure of the Division of Tax Appeals, in some cases has resulted in refusal to permit amendments and has resulted in long delays and litigation in connection therewith, as well as long delays resulting from the failure of the Division of Tax Appeals to decide motions concerning amendments. There seems to be no reason why the legislation recommended above should not be adopted, and every reason for its adoption.

Twelfth

Execution of Petitions by Attorney or Agent.

That legislation be enacted to provide that any petition of appeal or amended petition of appeal, or any pleading, paper or document of any taxpayer, whether an individual or a corporation, may be executed and filed by an attorney-at-law of New Jersey, without the requirement of any affidavit or other evidence of his authority to act for such taxpayer, and that there shall be no discrimination in the matter of the execution and filing of petitions of appeal or of amended petitions of appeal, or of any other agents of corporation and agents of individual taxpayer pleading, paper or document, between corporation and individual taxpayers, or between their respective agents.

An attorney-at-law of New Jersey should be accorded the same confidence, rights and privileges in practicing before the Division of Tax Appeals as he is accorded in the Courts of Law and Equity in this State, and rules of the Division of Tax Appeals discriminating against corporate appellants and their agents in the matter of the execution and filing of petitions of appeal should be expressly prohibited.

Thirteenth

Consent Judgments.

That legislation be enacted to provide that no judgment shall be entered by the Division of Tax Appeals in any appeal from

County Board upon the oral consent or agreement of the taxpayer and the City, or their respective attorneys, but that the Division may enter judgments on such appeals, upon such proof and under such rules and regulations as it may from time to time prescribe, upon the written consents or agreements of the taxpayer and the City, or their respective attorneys, verified by qualified experts as to the facts therein alleged in support of the valuations therein consented to.

As the majority of judgments of the Division have been entered on such consents, most of them oral consents, without any proof or testimony, and without regard to the true value of the property, it is obvious that the above legislation should be enacted, to the end that the interest of the State of New Jersey, and the taxpayers generally, may be protected, as far as possible, by requiring that such judgments of this State Division may not continue to be entered without reasonable requirements and verification of facts to enable the Division to make a determination of true value.

Fourteenth

Complete Hearings County Boards.

That legislation be enacted to require all County Boards of Taxation to give complete hearings on all petitions of appeal filed with them.

The County Boards of Essex County and Hudson County give complete hearings; most other counties do not, and it appears that most of them give practically no hearing. If all County Boards are required to give complete hearings, the intent of the law will be carried out and fewer appeals to the State Division of Tax Appeals will be necessary and the number considerably reduced.

Fifteenth

Limit Time of Certiorari.

That legislation be enacted by way of amendment or supplement to existing Statutes, to provide that no writ of certiorari to the Supreme Court shall be allowed to review a judgment of the Division of Tax Appeals, upon an Appeal from a County Board, after two months from the date of the entry of said judgment, and that, if such judgments so sought to be reviewed shall have been entered after hearing granted, and testimony taken, by said Division of Tax Appeals, the record of the said Division of Tax Appeals shall go up to the Supreme Court on such reviews, and shall be conclusive as to questions of fact, and only questions of law may be reviewed in such certiorari proceedings.

One of the objects of this change in the law is to decrease the unreasonably long period of time permitted to review judgment of the Division of Tax Appeals on writs of certiorari to the Supreme Court, and thereby avoid the delays in determining final tax liability. Since taxpayers may have only one month to appeal from the County Board to the State Division, there seems to be no hardship to them to limit the time to two months for an appeal from the State Division to the Supreme Court.

The other object of this change in the law to avoid what practically amounts to another trial de novo in the Supreme Court on the facts, by the taking of depositions, or otherwise, as to the facts. After a complete hearing before the County Board, and a trial de novo with a complete hearing before the State Division, it would seem to be advisable to limit further appeals as to the facts. Under the present Statutes, the appeals may be carried to the Court of Errors and Appeals from the Supreme Court.

This change in the law would not affect certiorari proceedings to review a judgment of the Division of Tax Appeals upon an appeal against a determination of the Division of Taxation and the Director thereof. I make no recommendation as to such cases but suggest that they be considered in connection with the legislation above recommended.

Sixteenth

Judgments Binding upon Municipal Assessors.

That legislation be enacted to make the Division of Tax Appeals judgments binding upon municipal assessors where the Division of Tax Appeals judgment is the final judgment, and to make County Board's judgments so binding where the County Board judgment is the final judgment, and, to provide that, in appeals against assessments for the two assessment years next succeeding the assessment year covered by such final judgment, evidence at County Board hearings and Division of Tax Appeals hearings shall be limited to changes affecting the value of the property occurring after the assessment date (now October 1st) last preceding the assessment year covered by such final judgment.

An example of the above would be as follows: Property assessed by the City for \$10,000.00 on October 1, 1945, for the assessment year 1946; on appeal, County Board, in August, 1946, reduced said assessment to \$9,000.00; on appeal from County Board, State Division of Tax Appeals, in January, 1947, further reduced assessment to \$8,000.00. The final judgment of the Division of Tax Appeals \$8,000.00, would be binding upon the local assessor for the years 1949 and 1950, except as to any changes in value of the property affecting its value occurring after October 1, 1945.

Neither County Board judgments nor State Division of Tax Appeals judgments have any binding force upon local assessors except for the assessment year for which they are entered, and frequently they are completely ignored in the following year by local assessors, and taxpayers, frequently, are required to file and prosecute appeals annually to hold a reduction previously granted, and usually there has been no change in the property affecting its value, in the interim, and the County Boards and the State Division of Tax Appeals, in such cases, merely repeat their previous actions.

Seventeenth

Stamps on Deeds Prima Facie Evidence.

That legislation be enacted to provide that in all cases where recorded deeds do not state the true consideration or sales price, that U. S. documentary stamps attached to said deeds may be admitted as prima facie evidence of the true consideration or sales price of the property described in such deed at hearings on appeals to the State Division of Tax Appeals and County Boards of Taxation.

Under existing law, evidence of such stamps on deeds is not admissible in hearings on tax appeals before the County Boards or the State Division of Tax Appeals. These stamps are about the only source of information as to the sales price to local assessors and County and State Boards, and since sales, as a general rule, are the best basis for determining value, it is important that this information be made available. This legislation will not prejudice any taxing district and will not prevent any taxpayer from proving the true consideration or sales price or explaining any circumstances in connection therewith. This information will also be valuable to the Division of Taxation and the Director thereof, in investigating assessments, etc. It is probable that one of the principal reasons (if not the principal) for stating only a nominal consideration in deeds is to withhold knowledge of the true consideration from local tax assessors.

This legislation should help to get a nearer approach to true value in tax assessments as well as in County Board and State Division of Tax Appeals judgments, particularly in view of the fact that in hearings on appeals before the County Board and the Division of Tax Appeals, the testimony is limited to practically nothing more than the opinion evidence of taxpayer's expert witnesses, some of whom have an interest in the outcome of the appeal by reason of contingent fee arrangement, and of experts of municipalities who are in many, if not most, cases, practically employees of the municipality, so that much of such hearing testimony is consciously, or subconsciously, biased.

Eighteenth

Board Employ Own Legal Assistant.

Amend R. S. 52:17a-11 to provide that the Division of Tax Appeals may engage its own legal assistant.

The present law prohibits the employment by any State Board or State officer, of any person to act as attorney, counsel, legal assistant or other legal adviser to such officer or Board, etc., and that such legal assistant, or legal adviser, shall be a deputy attorney-general, or an assistant deputy attorney-general, assigned to said Board or officer by the Attorney-General.

There should be an exception in the case of the Division of Tax Appeals for the reason that the Attorney-General is a party to some appeals heard by the Division of Tax Appeals, and appears before the said Division in said hearings to contest such appeals and, in the same capacity, in subsequent litigation in the upper courts, to review judgments of the Division of Tax Appeals, and for the additional reason that the Division of Tax Appeals is to all intents and purposes a court and cannot seek the advice or assistance of the Attorney-General in connection with the entry of its judgments.

The division of Tax Appeals needs a legal assistant permanently employed.

Nineteenth

Railroad Tax Act Mandatory or Directive.

Amend R. S. 54:29a-34, or supplement same, to make it conclusive as to whether the provisions thereof are mandatory or only directive, or to provide the conditions under which its provisions shall be either mandatory or only directive.

The above Statute provides that the State Division of Tax Appeals shall conclude its hearings on all complaints provided for by Section 31 of said Act (the Railroad Tax Act) on or before the first day of November following the filing of the complaint, and between November 5th and November 10th following shall certify to the Division of Taxation its final determination. There are some cases holding that the time limits in this Statute are mandatory upon the Division of Tax Appeals. There was considerable testimony on this subject during the investigation. The members of the Division who are lawyers have taken the position that the Statute is mandatory, and that they are bound by its time limitations, and have no discretion in the matter. On the other hand, the majority of the Division, who are not lawyers, have been following legal advice given to them that this Act is not mandatory upon

them, but is merely directory, and that hearings may be held, and judgments entered, and certifications made to the Division of Taxation, after the expiration of the dates fixed and limited by such Statute. Recently, in State Court litigation to review a judgment of the Division of Tax Appeals, in the Central Railroad case, the Attorney-General took the position that this Statute was not mandatory upon the Division of Tax Appeals but is only directory.

This Statute should be amended or supplemented to settle this question definitely.

Twentieth

Assessments—Equalization—Investigation—Division of Taxation.

That the Division of Taxation and the Director thereof set up (or expand, if already set up) and maintain permanently a special department with the said Division to exercise the powers and perform the duties provided for by R. S. 54:1-18 to R. S. 54:1-38, both inclusive, so far as said powers and duties relate to tax assessments of counties and municipalities, which special department might be known as the County and Municipal Department. These powers and duties cover investigation of irregularities or inequalities of assessments, examination of assessors and others, increases and decreases of assessments, investigation of methods of local assessors, exercise of power over local assessors in making assessments and reassessments, equalization of assessments, removal of assessors, etc.

The powers and duties of the Division of Taxation and the Director thereof, under said Statutes, seem well defined thereby, but it may be necessary in a few instances to clarify or expand those powers. I would recommend that R. S. 54:1-29 and R. S. 54:1-30, relating to reassessments and investigations, be amended to increase the amount that may be disbursed, or to remove the limitation on the amount that may be disbursed, and to remove the provision that investigations shall be made once in every five years, to the end that the investigations may be continuously made.

The Division of Taxation and the Director thereof have very broad and comprehensive powers in the matter of the assessment, reassessment and equalization of assessments and control over assessors, etc., and the benefits and improvement in tax assessments throughout the State that could come from the active and continuous enforcement of these Statutes are incalculable. Such was the intent and object of those laws. Such enforcement thereof would protect the interests of taxpayers generally, and result in a nearer approach to assessments at true value, and the elimination of much inequality and discrimination.

The principal cause of excessive tax appeals is no doubt faulty local assessment, which is the root of most of the trouble with tax assessments. The enforcement of these Statutes would attack the problem at the root and should result in a considerable decrease in the number of tax appeals.

This special and permanent department within the Division of Taxation would need adequate and well-trained personnel to make continuous investigations, and to gather and keep available for continuous reference data and information, all of which could be a source of great assistance to local assessors, and to members of County Boards of Taxation and to the State Division of Tax Appeals, and should permit all of them to function more efficiently. The exercise of the powers and duties under these Statutes by the Division of Taxation is necessary to supplement the work of local assessors, the County Boards of Taxation and the State Division of Tax Appeals, and to bring about and maintain a nearer approach to justice and equality and uniformity in tax assessments, particularly of real property.

This is not a simple task, but, in my opinion, it is imperative, and I can think of no greater service that the State could render than to appropriate sufficient moneys for this purpose. The investigation which I have just concluded profoundly convinces me of its necessity.

However, these Statutes are not self-enforcing, and they cannot be properly enforced without substantial additional appropriations to the Division of Taxation for such purposes. A study of these Statutes will make it obvious that their full and continuous enforcement will require the expenditure of a considerable sum of money annually, and that it would be a waste of time, effort and money to provide less than adequate funds, or not to provide same continuously. I believe that no State money could be expended for a more worthwhile, or necessary, purpose, or for one more in the interests of the citizens of the State, or for the correction and improvement of a more serious and disturbing situation. I am informed, and believe, that heretofore it has been impossible to properly enforce these Statutes because of lack of necessary appropriations.

Twenty-first

State Tax Court.

This recommendation is made as an alternative to the **Third** recommendation hereof.

That the Division of Tax Appeals be abolished and succeeded by a Statutory Court to be known as the State Tax Court, which shall not be a division of the Division of Taxation, but shall be an independent court. That the powers and duties of said Court be clearly

and fully defined by Statute. That it consist of seven members, all of whom shall be counsellors-at-law of the State of New Jersey of at least ten years' standing, and who shall be chosen, not only because of their legal standing, but also because of their possession of special qualifications of experience and knowledge in matters concerning the valuation and taxation of property, particularly real property; that they shall devote their full time to the duties of the office. That one of the members, who shall be named by the Governor as Presiding Judge of said Court, shall receive an annual salary of at least \$9,000.00. That each of the other members of said Court shall receive an annual salary of at least \$8,000.00. That upon the creation of said Court, one of the judges thereof shall be appointed for a term of seven years, one for six years, one for five years, one for four years, one for three years, one for two years and one for one year, and, subsequently, members shall be appointed for a term of seven years.

The Division of Tax Appeals, or its predecessor, the State Board of Tax Appeals, has been denominated a Court in some decisions of our Courts, and in connection with some provisions of the Tax Acts, although it appears that it has been most frequently denominated by the Courts as a quasi-judicial body.

The investigation of this department has demonstrated that it is not an administrative body, and that it has no administrative functions, and exercises and performs no administrative powers and duties. If the term "quasi-judicial body" correctly describes it, the word "quasi" must be limited, or interpreted, to mean "like" or "similar" or, probably, and more accurately, the "same." The word "quasi," in this case, does not mean that it possesses administrative powers and performs administrative duties, together with, or in addition to, its judicial powers and duties. It is apparent that the functions of the Division of Tax Appeals are exclusively judicial, and that it is an appellate court and has no other functions, and its members have so regarded it, and that it should be so continued. Though its jurisdiction is special, in that it is limited to a particular field and a particular type of cases, it is none the less a court.

Reference is made to the second paragraph of the **Second** recommendation hereof, to show that this Division has been proceeding upon the premise that it is exclusively a judicial body, and nothing more or less than an appellate court. My report of the investigation of this Division just concluded will, I believe, make it appear obvious that this body is a court, and should be so treated, and that its members should be lawyers.

This State Division differs with County Boards even to the extent that County Boards are appellate bodies and have powers to review appeals, because that is only a part of the functions and powers

and duties of the County Boards, which have additional and different powers and duties concerning assessment, reassessments, equalization of assessments, etc.; the County Boards are not exclusively judicial and appellate bodies, but perform many important additional functions. The County Boards' jurisdiction in matters of review and appeal are limited locally to the County, which brings them into closer association and relationship with the local assessors and the local taxpayers, and their members are residents of the County and presumed to be familiar with local conditions.

The State Division of Tax Appeals has state-wide jurisdiction that it has powers to review the actions, determinations and assessments of the Division of Taxation and the Director thereof; that the other appeals that come to the State Division are appeals against County Board judgments, not appeals against original assessments, and represent a second appeal in each case; that there seems to be a need that this body shall have the dignity and prestige that goes with an independent court and that the efficient functioning thereof requires that its members shall possess legal knowledge and experience.

Under the existing Statute, R. S. 54:2-3, the Governor, with the advice and consent of the Senate, could appoint seven lawyers, or any number of lawyers not less than two, as members of this Division, but there is no requirement in the law to appoint more than two members. Under the amendment proposed in the Third recommendation hereof, seven lawyers could be appointed and no less than four, but there would be no requirement to appoint more than four lawyers. The reasons which impelled the Legislature to provide that at least two members must be counsellors-at-law would seem to require that all the members should be counsellors-at-law.

If such State Tax Court be created, a few of the recommendations aforesaid might be covered by the rules which such Court would be expressly empowered to make and enforce, instead of by legislation.

Twenty-second

Filing Fees.

That legislation be enacted to read substantially as follows: "Upon the filing of a petition of appeal by any taxpayer, or taxing district, with the Division of Tax Appeals, pursuant to section 54:2-39, or section 54:2-37, or section 54:2-35 of the Revised Statutes, such taxpayer or taxing district filing such petition shall pay to the Secretary of such Division a fee of \$1.00 for each petition where the assessed valuation of the property described in such petition is \$10,000.00 or less, and a fee of \$2.00 for each petition

where the assessed valuation of such property is more than \$10,000.00."

It seems proper that such nominal fees should be paid to this department. The amount is too small to discourage any legitimate appeal, but might discourage some unwarranted ones—and the aggregate amount would represent substantial revenue to the department. The Courts, and other State Departments, require the payment of fees, and it seems equally appropriate in this case. County Boards require a fee of \$1.00 by taxpayers upon filing petitions where the assessed valuation of the property is over \$5,000.00, but no fee is paid to the County Board by a taxing district because taxing districts do not appeal to the County Board (except in rare and special instances). Appeals to the State Division of Tax Appeals come from both taxpayers and taxing districts, and there seems to be no reason for discriminating between the taxpayers and the taxing districts in this matter. Perhaps the fee should be more or less than above suggested; the important point is that some fee should be paid; the amount of the fee (though it should be appropriate) is secondary.

Twenty-third

Removal of Members.

Amend R. S. 54:2-6 by striking out the words now in that section, and substituting, in lieu thereof, the words: "A member of the Division of Tax Appeals (or of a State Tax Court, as the case may be) may be removed by the Governor, for cause, after hearing."

The following are not made as recommendations but are offered as suggestions for further and careful study and consideration. I do not make these suggestions in the form of recommendations for the reason that I have not thought them through, and because I realize their adoption would require many changes in many tax laws. These suggestions bear fundamentally upon the whole subject of real estate taxation, the administration of the tax laws, and will affect appeals and reviews of assessments. I believe these suggestions are worthy of more complete examination.

First Suggestion

Triennial Assessments.

That legislation be enacted to provide for triennial assessments of real property, and for annual changes in such assessments only in cases where changes shall have occurred in any assessment year

subsequent to such triennial assessment date which have increased or decreased the value of such property, and to the extent of increase or decrease in value. The State Constitution provides that "property shall be assessed for taxes under general laws and by uniform rules according to its true value." I have not studied the constitutional questions involved long enough to venture a final opinion thereon, but it is my present belief that such triennial assessments would not require a constitutional amendment. Assessments would continue to be made under general laws and by uniform rules according to true value, and annual changes in the assessments would be made for that purpose. In effect, the assessments would continue to be made annually, but there would be no change in the assessment made on the triennial assessment date if no change had occurred in the value. The local assessor would still be obliged to inspect all properties annually to discover any changes which may change the value of any property, either to increase or decrease the same.

Changes affecting the value of the vast majority of real properties rarely occur suddenly, or as frequently as annually, and the value of land, particularly, does not change annually. Economic changes take place which may increase or decrease land generally, and other changes occur which may affect land in particular locations, because of particular conditions applicable thereto, but, by and large, such changes are the exception in a three-year period, and could be provided for, as aforesaid. There may be a question of annual depreciation on some buildings, which could also be provided for, as aforesaid. I believe it is correct to say that no regard to depreciation is made within three-year periods as to most buildings under the annual assessments now made.

This change would save a great amount of time, effort and expense, and should not diminish the quality of assessments, but would probably improve the same. Such a change should considerably decrease the number of tax appeals to County Boards and the State Division. Under the present law, every appeal, whether to the County Board or to the State Division, is a trial de novo, but under such a change the trial of appeals against assessments for the two intervening assessment years would be limited to changes in value occurring since the triennial assessment date.

Second Suggestion

Advance Assessment Date Four Months.

That the assessing date be advanced four months, from October 1st to June 1st. This change would require corresponding changes or advancements in dates in the tax laws relating to filing by local

assessors of tax duplicates with the County Boards and the actions of County Boards thereon, adoption of municipal and county budgets, and tax ordinances, filing tax appeals with County Boards and with the Division of Tax Appeals, and hearing thereon by said bodies, etc.

County Boards now deliver to the taxing districts corrected tax duplicates on or before April 1st, after which the municipalities send out the second tax bills covering the last half of the assessment year; appeals are filed with the County Boards between May 15th and August 15th, and those Boards hold hearings thereon from August 15th to November 15th, and appeals from the County Boards must be filed with the Division of Tax Appeals by December 15th. Under this arrangement, the State Division of Tax Appeals receives practically all of the petitions together, or or about December 15th, and they cannot be heard until after the end of that year. The County Board hearings are also late in the year, and the municipalities are obliged to send out tax bills twice a year to each taxpayer. It is therefore impossible to carry out the intent of the law which seems to be that there should be an adjudication as to the final liability for taxes within the assessment year. If the assessing date were four months earlier, tax duplicates filed that much earlier by the local assessors with County Boards, and returned that much earlier by County Boards to the municipalities, and budgets and tax ordinances adopted that much earlier, it should avoid duplicate annual tax bills and make it possible to send out, before January 1st, one tax bill covering the full year; and also make it possible for County Boards to hear appeals between April 15th and July 15th of the assessment year, and for petitions of appeal to be filed with the State Division of Tax Appeals not later than August 15th (and, if the **Eighth** recommendation herein made be adopted, appeals would be filed with the State body continuously between May 15th and August 15th). These changes would impose no hardships upon taxpayers, or upon municipal, County or State officials, but would be of benefit to all concerned. But I am not unmindful of the importance and extent of the revisions of tax laws that would be entailed, or of some of the objections that might be made against the plan, but, in my limited study of the matter, it seems that the advantages outweigh the objections and that the proposed change may improve the tax situation generally. This suggestion is made tentatively, for the purpose of further study, but I believe it is worthy of careful consideration.

Respectfully submitted,

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Investigator and Examiner.