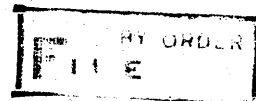


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PUBLIC HEARING

ON

ASSEMBLY BILLS NOS. 139 AND 201

AND ASSEMBLY BILL NO. 18

[ tax exemptions by frat.  
ORGS. <sup>or</sup> Personal prop. stored in  
warehouses.

H E L D

APRIL 8, 1943

STATE HOUSE, TRENTON, N. J.

B E F O R E

ASSEMBLY COMMITTEE ON TAXATION

Milton A. Feller, Chairman

Howard S. Keim

David VanAlstyne, Jr.

Frank W. Shershin

Bernard W. Vogel

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Hearing Division  
New Jersey Civil Service Commission,  
State House, Trenton, N. J.

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# I N D E X

## Re Assembly Bills Nos. 139 and 201

Page  
Number

Charles R. Erdman, Jr. - Tax Exemption Repeal Committee	1 - 84
James J. Smith - Executive Secretary, State League of Municipalities	11
Paul W. Ewing - City Attorney, New Brunswick	12
John F. O'Brien - Tax Consultant, New Jersey Ass'n of Real Estate Boards	15-a
Alvin A. Burger - State Chamber of Commerce	20
Mrs. Edwin Rebout - State League of Women Voters	22
John J. Cumming - Paterson Chamber of Commerce	23
Alfred Hadley - Chairman, Mercer County League of Municipalities	24
Fred G. Kents - Attorney, City of Summit	24
Norman Maine - Solicitor, City of Camden	24-a
John D. Clark - Township Committee, Millburn Township	24-a
F. A. Schurchardt - New Jersey Bankers Association	26
Herbert J. Hannech - Attorney for Borough of Princeton	26
Morris Clyman - President, New Jersey State Assessors Association	30
Thomas Parsonett - for the City of Newark	32
Edgar Warren - Borough Clerk of Princeton	32
George Suresky - Attorney for City of Paterson	32
Philip Blaze - New Jersey State Taxpayers Association	33
Vincent Costello - Attorney for City of Gloucester	34
Harry G. Fredennick - Mayor, North Caldwell	35
Salvador Diana - Corporation Counsel, Plainfield	35

# I N D E X

## Re Assembly Bills Nos. 139 and 201 (continued)

	<u>Page Number</u>
L. D. Champion - City Solicitor, Pleasantville	35
Vincent Losche - President, New Jersey State League of Municipalities and Alderman of Morristown	36
C. J. Miller - City Comptroller, Trenton	36
George E. Behlinger - Solicitor for Ewing Township	36
Elvin R. Simmill - Attorney for Borough of South Belmar, Spring Lake Heights, and Twp. of Wall	38
W. T. Vanderlip - for fraternal organizations generally, other than college fraternities	40 - 98
William J. McCormack - Past District Deputy, Benevolent Protective Order of Elks	53
Charles A. Woodruff - Independent Order of Odd Fellows	66
Walter S. Gray - Grand Master Mason for State of N.J.	70
J. Harold Johnson - for Rutgers College fraternities	75
Mr. Kline, resident of Trenton	80
Mr. McAllister, resident of Camden	81

## Re Assembly Bill No. 18

Roscoe P. McClave - Assemblyman, Bergen County	108
Thomas Parsonett - for the City of Newark	109
James J. Smith - Executive Secretary, State League of Municipalities	113
Duane E. Minard, Sr. - Committee of Warehousemen, Shippers and Owners of Stored Goods	114 --175
J. Leo Cook - Chairman, New Jersey Merchandise Warehousemen's Association	132



# I N D E X

## Re Assembly Bill No. 18 (continued)

Page  
Number

John E. Yauch, Jr.	185
F. W. Jackson - New Jersey State Dept. of Agriculture	188
Frank O'Hara - President, National Association of Refrigerated Storage Warehouses	141
Mr. Meehan - Harbor Tank Storage Company	141
Peter Perretti - Coastal Oil Company of Port Newark	142
Alvin A. Burger - State Chamber of Commerce	143
E. W. Wollmuth - Newark Chamber of Commerce	146
Genever English - Attorney for lumber interests	148
John J. Cummings - Paterson Chamber of Commerce	156
Michael J. Hickey - Manufacturers Ass'n of New Jersey	156
Robert J. Bain - Independent Warehouses, Inc.	157
Mr. Lowe - Tidewater Field Warehouses	158
J. A. Laird - Associated Railroads of New Jersey	164
William L. Tigue - Erie Railroad Company and Susquehanna Railroad Company	167
Ralph W. Chandless - for the Township of Saddle River	167

MR. FELLER: May I make an announcement? We will get started in a few minutes. Those who are appearing in behalf of Assembly Bill No. 139 will please report to Mr. Erdman, and those who are appearing in behalf of Assembly Bill No. 201 to Mr. Vanderlip. We would like the groups to get organized and decide who the spokesmen for the various groups will be. However, nobody will be denied the opportunity to speak, and you will speak as long as you please, except that we would like to make one request -- that the subsequent speakers kindly refrain from any unnecessary repetition.

The order which we will follow is: The first two bills to be discussed will be Assembly Bills Nos. 139 and 201 because it seems that apparently those who are in favor of one are opposed to the other and vice versa. And I think we can save considerable time if we discuss them both together. The hearing on Assembly Bill No. 18 will be given last. I would suggest that those who are speaking advance down before the rostrum, so that the secretary can hear what you have to say, and if you have any prepared statements, kindly give them to her, because they will be set out in the report in detail.

Who is the first speaker for Assembly Bill No. 139?

MR. ERDMAN: Chairman Feller and Members of the Assembly Committee on Taxation: First of all, on behalf of the Tax Exemption Repeal Committee, I want to thank you for having this

public hearing on one of the most important of governmental subjects; namely, tax exemption. John Marshall, as you know, is the author of the phrase, "The power to tax is the power to destroy," and quite equally, the power to grant tax exemptions is the power to destroy the remaining taxpayers. Therefore, this is, as I say, probably one of the most important of governmental problems that the Legislature can deal with, and for that reason we are deeply appreciative of the fact that you were willing to call this public hearing on these two very important bills.

I would like to take about two minutes or three minutes to summarize what, in my opinion, has been the history of Assembly Bills Nos. 139 and 201. If I make misstatements of fact or misrepresent in any way, I know my friend, Bill Vanderlip, will correct me when his opportunity comes. As I understand it, the situation was this: Prior to 1936 there were a number of fraternal buildings in the State, possibly we might term them the so-called specialty buildings, which had been tax exempt; why, I don't think we need go into except it may have been on the theory that they were exempt under the old laws, which are now part of Revised Statutes 54.4-5.6, which has to do with the question of exemption of educational, charitable, religious, and philanthropic institutions. But around the year 1935, or whenever it might have been, certain assessors, believing that these groups were not entitled to exemption under the then existing statutes, placed

these buildings on the assessment rolls, and appeal was had to the Legislature, with the result that the Legislature enacted the statutes, one in 1936 and the other in 1937, which are now incorporated as part of the Revised Statutes, the one which Assembly Bill No. 189 would repeal. As I understand it, and I hope I am correct in making this statement, at the time of that legislation it was the distinct understanding that these buildings would be used only for purposes of the organization, and when the words were included in the bill that they would not be used for any purposes of profit, it was distinctly understood that these buildings would not be allowed the privileges of having bars and restaurants and dormitory rooms and many of the other things which, to the ordinary man in the street and particularly any business or commercial competitor, meant a profit purpose. So the matter rested for a year or so, but meanwhile, as was inevitable, other organizations who naturally thought, and I believe rightly so and the courts thought rightly so, they had an equal right to tax exemption under the way these statutes were drawn, appealed for exemption and were granted exemption. That led, as we know, to more and more requests and, naturally, on the part of the State Tax Board, more and more grants for tax exemption, because - and this is the most fundamental point I think the Committee should consider - it is absolutely impossible, according to the highest courts of the State, to classify

according to ownership; you must classify, if at all, according to the use to which the building is put. Therefore, the court has made it quite clear, in the broad definition they have adopted of the words "fraternal organization", that it is any group of men or women who are banded together for a common purpose, and no amount of mumbo jumbo or anything else in the statement as to what constitutes a fraternal organization can, under our laws and under our constitution, exclude other groups who have an equal right to tax exemption if you grant it to one group. The only thing that can possibly be done is to restrict the use to which the building is put.

That summary is our view of what has happened; namely, the Legislature, whatever the purpose, whatever the justification for it, intended to do one thing but it was impossible, because of the state of the constitution, if you wish to put it, the state of the laws, to do exactly what they had intended to do. We submit that there is no way, and it does no good, to further attempt to define what you mean by fraternal organization, because the courts have to grant exemption equally if a group bands together for a common purpose and that purpose doesn't have to be - the purpose is not stated in the bill - a fraternal purpose. The courts have very clearly defined a fraternal purpose. They have taken it from Webster's Dictionary. They have adopted that as the definition of a

fraternal purpose, and so, reductio ad absurdum of the argument but none the less it is perfectly logical, if I and my five sons wish to incorporate as the Fraternal Order of Loyal Orange and Black Men, we have just as much right under the statute to tax exemption as the Red Men, and I submit that that is not quite as facetious as it sounds because that illustrates the point that you cannot attempt to classify simply by defining fraternal organization. If you are going to classify, you have got to classify by the use to which the premises are put, and I submit I understand that the original intention was, to some extent, to submit those premises to a very strict test as to what constituted profit.

Then what happened? The State Board of Tax Appeals, in their own wisdom, enlarged upon the original, of what was thought to be the original, idea of profit. In the case of the City of New Brunswick vs. The Fraternal Order of Eagles, they used this dictum or this definition to attempt to distinguish when a purpose had profit as its motive and when it didn't. They said the real issue is whether the fraternal organization in question is promoting any part of its property to be devoted to cases ordinarily calculated to render pecuniary profit as exercised by persons or corporations generally. That is rather broad but it has a very definite point; namely, that any of these ordinary goings and comings of supplying liquor, of

supplying food, of supplying board and lodging are, as exercised by persons and corporations generally, usually designed to profit, and therefore in that particular case they said the property could not be exempt because it had a plenary consumption liquor license under which liquor could be dispensed to anyone, but shortly thereafter they backtracked very decidedly on their definition of profit and they held that use of a bar restricted to the members and their guests - that in such circumstances there is no loss of the right of exemption. They didn't go into the question of profit, as to whether there was enough profit from the bar or anything else, so the continual broadening, both of the idea as to what constitutes a fraternal organization and as to what constitutes profit, has resulted in one inevitable end, and that is that any group, any social group that gets together for a common purpose, has a right to exemption just as much as those that were originally intended to be exempt.

I could say a great deal, and I will say a little bit, about the fact that I don't think that this exemption should ever be granted to any group unless there is a very definite public purpose performed by that group and I, in common with probably nine-tenths of all those who are opposed to Assembly Bill No. 201 and in favor of Assembly Bill No. 189, am a member of at least three fraternal groups and one Princeton club group which is seeking tax exemption, and I want to submit

that the rank and file that I talk with, certainly of undergraduate clubs and undergraduate fraternities, have never once intimated that they had any right or claim to tax exemption, but none the less they have all applied for tax exemption. Seventeen eating clubs in Princeton claim they are too poor to pay taxes but they are not too poor to hire rather expensive lawyer and pay on the barrelhead in advance.

Who are these people of the Rutgers fraternities and the college clubs in Princeton who are seeking tax exemption? It is certainly not those who use the premises. I didn't see last spring a year ago any large outpouring of Princeton undergraduates nor a single Rutgers undergraduate here to ask for exemption for their premises. Who came? Only the alumni. Which alumni? As far as Princeton is concerned, and I think this goes for Rutgers, the alumni that want tax exemptions are those representing the trustees who are the trustees that in many instances held the mortgage on that club or on that fraternity. I know that is true in the case of Princeton, and I suspect it is true in the case of many of the Rutgers fraternities. I would like to say that I think they ought to form a fraternal organization called the Benevolent and Self-protective Order of Alumni Mortgage Holders, and I think that they would have a very real case to present in this time of declining undergraduate revenues, when war naturally has depleted, if not wiped out, many of these



undergraduate groups, and I think that the only chance they have to collect their interest and their amortisation on their principal will be by tax exemption. Incidentally, they have all been paying taxes up until, as I said, this broadening of the meaning of fraternal organisation and this broadening of the meaning of profit had admitted them to the tax exempt rolls.

Then we come to the recent decision last fall of the Supreme Court in a second Rutgers fraternity case, in which the court, as you all know, held that the 1937 amendment, although it had been stricken out and been separable in the Alpha Rho case because at that time it was on a state of facts antecedent to the adoption of the Revised Statutes in December, 1937 - the court then held last fall that the new set of facts; namely, the adoption of the Revised Statutes, had created a new situation and therefore the paragraph which would have excluded, attempted to exclude in the original intention of the Legislature, college fraternities and college clubs was held to be unconstitutional in accordance with the first case but so integral and so vital a part of the whole statute that the whole law must fall. That, of course, is the reason for Assembly Bill No. 201. It attempts to get around the decision of the court and would get around it, and that is all it would do. It would leave us right where we were before the court's decision of last November - no more; no less. I knew well that we will have lawyers get up on

the other side and say this will exclude all except the original group and so forth and so on, but lawyers on our side are equally convinced that it will not and that this endless litigation will go on and this costly litigation will go on, costly to every municipality that has to fight this thing year in and year out, and ours is one of them and I don't mean maybe, and I think for that reason, regardless of what the original merits of the action of the Legislature in 1936 have been, public policy demands the repeal of that statute. I don't think we necessarily need to argue whether it was originally justified or not. The larger public policy now, because of the tremendous increase which is going to occur and is occurring and has occurred because of this interpretation, demands, in fairness to the remaining taxpayers of the State, that the bill be repealed, the statutes be repealed.

I would like to also submit to those who are advocating Assembly Bill No. 801, if I am correct in my assumption that originally the word "profit" was meant to exclude the use of the premises for many of these pursuits which are ordinarily thought to be commercial, that the simple inclusion of this paragraph might have accomplished that end. Provided the foregoing exemption shall not apply to any property of which any part is used for the merchandising or sale of any commodity or service to members or the public or for any purpose of pecuniary profit or for the boarding or lodging of members or the public

other than such superintendent, janitor or caretaker as may be required for the care and conduct thereof."

Now, in summary I would just like to state that our committee believes that the passage of Assembly Bill No. 139 is essential because the original intention of the Legislature is impossible of fulfillment because in granting exemption to a few, you must of right grant it to the remaining organizations and any newly created organizations, and inasmuch as there is no protection in the law that will prevent any organization from using its particular premises for golf or tennis or any other common welfare, social, athletic, recreational purpose, it is impossible to carry out the original intention.

We have a large number of organizations represented here today, and their representatives will speak briefly. I am sorry I took so much time but I feel very deeply that this is one of the most serious matters affecting the State. I speak feelingly when I say that in our own municipality this new definition simply means endless litigation; that we must have Assembly Bill No. 139 or we will see approximately one million dollars worth of property going off our tax rolls, which our Borough Clerk can tell you about in a few moments. The same thing is true all over the State - more than twenty million dollars in the process of going off the rolls unless one of two things happens; unless the decision of the court last November

sticks in the Court of Errors and Appeals; or, in the event it should be overruled, that the Legislature passes Assembly Bill No. 139.

Thank you, Mr. Feller.

MR. FELLER: Thank you, Mayor. I would like to suggest, for the benefit of the press and the secretary of the Committee as well as everybody here, that each speaker, before he begins his address, kindly give his full name clearly, his home address, and the capacity in which he is here, whether he represents an organization or whether he is a municipal official or in whatever other capacity he may be present today.

MR. ERDMAN: The next speaker will be Mr. James Smith, Executive Secretary of the State League of Municipalities.

MR. SMITH: Mr. Chairman and Members of the Committee, ladies and gentlemen: I will avoid repetition of the discussion that was carried on by Mr. Erdman and simply state that the New Jersey State League of Municipalities, which represents over eighty percent of the population of the State of New Jersey, is definitely in favor of the passage of Assembly Bill No. 139 and opposed to Assembly Bill No. 201. It is fundamental in all legislation that when the time has come when it no longer is effective as originally intended, it should be amended or discarded, and that is the situation with the original legislation that gave fraternal organizations exemption. All we are asking today is that that

situation be met as it actually is. The tendency in government certainly is not to reduce the cost of government. Government expenses and services are going up, and we cannot have the expense going up and the income going down unless there is good, sound, substantial reason and justification for that exemption. We believe that situation does not exist today insofar as the fraternal organizations are concerned. We therefore go on record as in favor of Assembly Bill No. 139 and opposed to Assembly Bill No. 201, and I present to the Committee a resolution which was passed by the New Jersey State League of Municipalities at its convention last November, unanimously taking that position in regard to this tax exemption question.

Thank you.

MR. PELLER:

Thank you, Mr. Smith.

MR. ERDMAN:

I will now call on Mr. Paul Ewing, City Attorney of New Brunswick.

MR. EWING:

Members of the Committee and gentlemen: I am appearing here today on behalf of the City of New Brunswick, in which all litigation respecting the so-called Jamieson Act of 1936 and the amendment thereto, the Devos Act of 1937, originated.

As you men know, we have in New Brunswick Rutgers University and we have also approximately twenty-five college fraternities. These fraternities up until the year of 1939 paid taxes to the City of New Brunswick. The total ratables of these

fraternities approximated about one million dollars and they paid in tax revenues to the City of New Brunswick each year for governmental services rendered to them approximately twenty thousand dollars. In 1937 they challenged our assessments and that resulted, as you know, in long litigation, in which we ultimately succeeded in having declared unconstitutional not only the Devoe Act but also the Jamieson Act of 1936, so that today, under the decision of the Supreme Court, all fraternities, including college fraternities, are now taxable and restored to the rolls.

If Assembly Bill No. 201 is passed by this Legislature, I predict here today that it will merely mean the taking off, the wiping out from the tax ratables of the City of New Brunswick, of one million dollars, and I think of Princeton approximately the same figure, and about twenty million dollars in the State. This amendment simply puts back again on the books precisely the Jamieson Act except that it excludes by specific reference the Devoe Amendment, which had for its purpose the exclusion of college fraternities. It says that the purpose is to clarify Section 54:4-5.26 and the clarification apparently is attempted by a definition of fraternities. I don't know what the purpose of Assemblyman Haneman was in the introduction of this bill, whether it was his purpose to grant tax exemption to the so-called general fraternities like the Masonic orders, the

Knights of Columbus or the Elks and at the same time exclude college fraternities, but if that were its purpose I say to him now he can't achieve that purpose constitutionally because the courts have said time and time again it is impossible to classify tax exemption as to ownership because all exemptions, to be legal and constitutionally effective, must go to the use of the property rather than to the ownership of the property, and this amendment merely puts back on the books again exemptions, not only for the general fraternities but for college fraternities as well, meaning a loss to the taxpayers of the State of twenty million dollars and especially a heavy burden to the taxpayers of the City of New Brunswick and Princeton, who are unique in that all the college fraternities and college eating clubs are located within their respective cities.

These college fraternities in New Brunswick, and I say this with all due respect to you college men and fraternity members and I am one, are nothing more nor less than glorified boarding houses. They are in actual competition with our boarding houses and hotels in New Brunswick, and yet they come to this Legislature and they are asking that they be given tax exemption, and they are carrying on a business which is in direct competition with the boarding houses and hotels of the City of New Brunswick, and probably the same is true in the Borough of Princeton.

The tax exemption situation in the City of New

Brunswick is briefly as follows: In 1920 our total tax exemption amounted to five million dollars; today our tax exemptions in the City of New Brunswick are twenty million dollars. One-third of our ratables in the City of New Brunswick are today tax exempt. I say to you men here today that if this amendment is passed and fraternities, including the college fraternities, are granted exemption, it will mean a tax rise of twenty points in the City of New Brunswick.

I do not want to take too much time because there are other speakers to follow me but I want to leave this thought with the members of the Committee: The decision of Mr. Justice Maher invalidating the 1936 act is now before the Court of Errors and Appeals for consideration. The case was argued at the last term of court and undoubtedly an opinion or decision will be granted within the next two or three months. I would urge to the members of this Committee that it would seem to me good business, from a legislative standpoint, to hold everything in abeyance until we get a final decision from the Court of Errors and Appeals on this matter. Thus we will have, I think, perhaps a decision which for all time will clarify and make definite the extent of this so-called tax exemption act. Nothing can be gained today by passing this amendment because the date for assessing property has long since passed and the bill under any circumstances could not become effective until the next assessing



date. Therefore, in conclusion, gentlemen, I think that the public interest would be better served by a postponement of the passage of any legislation at this time affecting the so-called Jamieson Act. Thank you.

MR. FELLER: Thank you, Mr. Ewing.

MR. ERDMAN: Mr. Chairman, to save time, since a good many of our speakers have just a sentence or paragraph, saying whom they represent and a resolution or action, would it be satisfactory if they rise in their places?

MR. FELLER: Surely.

MR. ERDMAN: If they have longer statements, they will go forward.

I would like to call on Mr. John F. O'Brien, Tax Consultant, New Jersey Association of Real Estate Boards, who will speak in place of Mr. Ben Schlossberg, President of the Association.

MR. O'BRIEN: Gentlemen: I can best and most briefly present to you the stand of the New Jersey Association of Real Estate Boards by reading to you a resolution adopted by it in December, 1942, at its annual convention: "We reiterate our condemnation of the tax exemption laws as they exist in this State today. We demand the immediate repeal of Revised Statutes Section 54; 4-3426 because it permits a gross abuse of the exemption privilege. We petition the 1943 Legislature, as its first order

of business, to create a special commission to make a thorough investigation of all existing exemptions accorded to both real and personal property, to the end that all unjustifiable exemptions may be eliminated and the properties covered by the exemptions restored to the tax rolls."

Since that resolution was adopted, the Supreme Court has nullified an action which the Legislature should never have taken, by declaring the 1936 exemption statute unconstitutional. It is now proposed to reenact it along lines apparently designed to cure the gross abuse of the exemption right which stemmed from a court decision on the old statute. We are opposed to that reenactment, and this opposition is not new nor is it aimed at the particular organizations which may benefit by it. For fifteen years, our Association has petitioned each new Legislature and each new Governor, not only to refrain from extending the exemption right, but to cause a thorough investigation of all existing exemptions granted to both real and personal property, to the end that all properties deemed to be entitled to exemption meet the said test of the exemption right and all other properties returned to the tax rolls, from which they should never have been removed. And this acid test is very clearly stated in the opinion of Justice Heher in declaring the 1936 act unconstitutional, where he held to the sound doctrine that tax exemptions are sustainable only on grounds of public policy; that is, "the service

of an interest fundamentally public and not private.

Exemptions not so grounded place an unequal and unjustifiable burden upon property taxed for the operation of government in the common interest".

It is a matter of public record, and has been for years, as set forth in studies by responsible sources, including various commissions of your own body, that the homes in New Jersey are taxed higher than the homes in any other State in the Union, and the largest single reason for that unjust and unfair and inequitable treatment of home-owners in this State I attribute to the exemption evil, an evil which has grown out of the ease and thoughtlessness with which the Legislature over the years has extended exemption to particular classes of both real and personal property. The total exemptions involved in these fraternal properties is but a drop in the bucket of the exemption evil. Considering both real and personal property, I do not think it is an exaggeration to say that for every dollar's worth of property assessed in this State there are over two dollars' worth of property not assessed because it has been exempted from assessment by legislative action.

It is for that reason we real estate men, who know the impact of this exemption evil on home ownership and the ownership of real estate generally, have for years been asking the Legislature to stop its spread and to examine into its growth.

The decision by Justice Heher may very well be considered a directive to the Legislature. Certainly, the test which he sets down for the right to exemption should not lightly be set aside. And if that test is to be applied in your consideration of the exemption asked by these fraternal organizations, and it surely should be, then I say its application should not stop there; in fairness to these fraternal organizations and to every other property owner not enjoying the exemption right, that test should be applied to every property, both real and personal, which today is exempted from taxation.

We not only wish to register our opposition to Assembly Bill No. 201 and our approval of Assembly Bill No. 139, but we wish to register with your Committee, as the Taxation Committee of the Assembly, our request that you recommend to the Legislature a complete and thorough investigation of all exempted real and personal property in the light of the doctrine laid down by Justice Heher, to the end that substantial justice may be rendered to all owners of property.

MR. FELLER: Thank you, Mr. O'Brien.

Mayor Erdman, Mr. VanAlstyne would like to ask you a question.

MR. VANALSTYNE: I would just like to ask how do the States of New York and Pennsylvania treat this question?

MR. ERDMAN: Well, all States have different laws granting tax

exemptions. In other words, if a fraternal organization

exemption and I know that a good number of the States do grant exemption to fraternal organizations, but after all, it is largely a question, as I have said in my remarks, of what interpretation your own courts are going to put on, first, what is a fraternal organization, and secondly, what does the word "profit" mean? That is the difficulty.

MR. VANALSTYNE: How does New York handle it?

MR. ERDMAN: They have an exemption granting exemption to fraternal organizations but they are not having the same difficulties we are having.

MR. VOGEL: I take it, from your remarks, you recognize there are some fraternal organizations that perform a service the State itself cannot perform. If this be true, would you recommend placing in the exempt category that class of organizations?

MR. ERDMAN: Personally, I don't happen to know of any such organization, so I couldn't make the recommendation because, to me, simply because a fraternal organization supports a charitable purpose is no reason for exempting the parent organization any more than because you and the rest of the members of the Committee support your local community chest is no reason for exempting your property. Of course, the organization itself which any fraternal group supports is rightly exempted under present statutes dealing with charitable, benevolent, educational, etc. institutions. In other words, if a fraternal organization

establishes a home for the aged or establishes some other understandable charitable endeavor, that home for the aged is, without Assembly Bill No. 201 and without repeal or anything else, exempt, but that is no reason for exempting, as I call it, a glorified country club in the city where they sell liquor, where they sell meals, where they rent out rooms, and that is the reason we have got to draw a distinction as to the uses to which you are going to put the building.

MR. FELLER: Mr. O'Brien, would you submit to a question by me?

MR. O'BRIEN: Yes, indeed.

MR. FELLER: You made a statement, I believe, that for every dollar's worth of property assessed in New Jersey, there is two dollars' exempt. Does that apply to both real and personal property?

MR. O'BRIEN: Yes, that would not apply to real estate alone; both to real and personal property presently exempted.

MR. FELLER: You may call your next speaker, Mayor Erdman.

MR. ERDMAN: Mr. Burger of the State Chamber of Commerce--

MR. BURGER: Mr. Chairman and Members of the Committee: I have a brief statement to present in behalf of the New Jersey State Chamber of Commerce, which represents a large group of property owners throughout the State whose annual taxes for the support of local and State government amount to many millions of dollars in the aggregate.

The State chamber wishes to register its wholehearted approval of Assembly Bill No. 159, which would repeal an act whose unfairness and unsoundness have already been conclusively demonstrated. The Jamieson Act, which granted a tax exemption to property owned by fraternal and other private organizations and used primarily by their members, should never have been permitted to pass and become law. It represented a decided step backward in our legislative efforts to improve the taxing system of this State. These legislative efforts have had as their objective the lightening of the tax burden on the owners of homes and other property in New Jersey; but the Jamieson Act, by permitting a large number of private organizations to go tax-free, simply added to the tax burdens borne by the rest of the property owners in the communities affected.

The Jamieson Act caused the State of New Jersey to say to the home owners of every New Jersey community, "You shall bear the cost of the municipal services rendered for the protection and improvement of edifices built for the enjoyment of privileged and exclusive bodies of men and women. You, not they, shall pay the full cost of police and fire protection afforded by the municipality for these properties. You shall pay for the refuse collection, street paving, sewerage, health inspection, shade tree and other public services extended to the properties owned by these clubs and fraternal groups."

The State Chamber of Commerce believes that tax exemption is a high privilege which should be granted only after it has been demonstrated, after careful and critical study, that the beneficiaries of such proposed exemptions are performing an indispensable service to the community and the State which no public agency is rendering or can render, or that they are contributing to the enrichment of the community in such a way as to produce an increase in property values and in taxable rates. Such a basis of measurement would seem to preclude the granting of tax exemptions on property used chiefly for social activities of exclusive societies and fraternal bodies.

We therefore urge the repeal of the Jamieson Act through the prompt enactment of Assembly Bill No. 189. Likewise, we urge the rejection of Assembly Bill No. 201, which, although advertised as a modification of the Jamieson Act, would nevertheless have the effect of continuing the same iniquities embodied in the present statute whose repeal we so earnestly desire.

MR. ERDMAN: I will now call on Mrs. Edwin Debout of the State League of Women Voters.

MRS. DEBOUT: Mr. Chairman and Members of the Committee: I wish to make a brief statement, which concurs with and supports the position taken by the Tax Exemption Repeal Committee of



which the League is a member. The New Jersey League of Women Veterans supports Assembly Bill No. 139, to repeal the act of 1936 and amendment of 1937 granting exemption to fraternal organizations, and opposes Assembly Bill No. 201, designed to clarify the 1936 act, because we believe that the exemptions granted by the 1936 act violate the fundamental principles of all taxation - (1) the fair distribution of the tax burden; and (2) ability to pay. Since New Jersey relies more heavily than any other State on taxes on real property to pay the cost of government, fairness in levying those taxes is especially important. The ownership and use of the properties covered by these bills does not relieve local or State government of any costs. Therefore, tax exemption for those properties is a gift from government to the owning organizations which has to be made up by an increase in the levy for every other property owner. Organizations of the same type which are not prosperous enough to own land and buildings have to rent meeting places and therefore pay taxes. We urge the passage of Assembly Bill No. 139 in order that these discriminations may be ended and that particular confusion in our tax structure be cleared away.

MR. ERMANN: Mr. John J. Cumming of the Paterson City Chamber of Commerce--

MR. CUMMING: Members of the Committee, ladies and gentlemen: I reside in Ridgewood, New Jersey, and represent the Paterson connection with that I have a residence occupied by my family

Chamber of Commerce. We are in favor of Assembly Bill No. 139 and oppose Assembly Bill No. 201.

Thank you.

MR. ERDMAN: I would like to call on Mr. Alfred Hadley,

Chairman of the Mercer County League of Municipalities.

MR. HADLEY: The Mercer County League of Municipalities has gone on record as favoring Assembly Bill No. 139.

MR. ERDMAN: I would like to read for the record two resolutions adopted by the Department of Local Government and the Local Government Board. Last October, the Local Government Board passed this resolution: "Resolved that the Local Government Board recommend to the Legislature the proposed repealer of Chapter 46 of the Laws of 1936," and again just last week another resolution, "This bill," having to do with Assembly Bill No. 201, "is proposed as an attempt to clarify Revised Statutes 54:4-3.26 and appears to be too broad in its general application. After discussion, it was moved by Mr. Ehmling and Seconded by Mr. Schenk that the Board disapprove Assembly Bill No. 201." This motion was duly carried.

I would like to call on Mr. Fred C. Kents, Attorney for the City of Summit.

MR. KENTZ: On behalf of the City of Summit, for the reasons already stated by the previous speakers, the City favors Assembly Bill No. 139 and is opposed to Assembly Bill No. 201, and in connection with that I have a resolution adopted by the Common

Council of the City of Summit on April 6, 1943, expressing their attitude in that regard.

MR. FELLER: Would you mind reading the resolution?

MR. KENTZ: I will be glad to. "Be it resolved by the Common Council of the City of Summit; That the Common Council favors the passage of Assembly Bill No. 139, repealing Section 54:4-3.26 of the Revised Statutes, which granted tax exemption to certain fraternal organizations and urges its representatives from Union County to vote for the passage of said bill. Further resolved, that the Common Council is opposed to Assembly Bill No. 201 and urges its representatives from Union County to vote against said bill. Further resolved, that a certified copy of this resolution be sent to our Senator from Union County and to the four Assemblymen and to the New Jersey League of Municipalities."

MR. FELLER: Thank you.

MR. ERDMAN: I will now call on Mr. Norman Heine, Solicitor for the City of Camden.

MR. HEINE: Mr. Chairman, I desire to register the attitude of the City of Camden, which, for the reasons expressed by the previous speakers, opposes the adoption of Assembly Bill No. 201 and favors the enactment of Assembly Bill No. 139.

MR. ERDMAN: I will call on Mr. John D. Clark of the Township Committee of Millburn Township, Essex County.

MR. CLARK: Mr. Chairman, Members of the Committee: We sent a

resolution to the Committee last fall on this subject. At that time we had received an appeal for tax exemption from the Short Hills Club in our township. As it happened, one of the officers of that club is a member of the Township Committee and he recognized the basis for their claim as a result of the Court's and the State Board of Tax Appeals' ruling. At the same time, he joined with the other members of the Committee in unanimously opposing the granting of such appeal on account of the fact that it would not be to the interest of the common good. Besides, in endorsing what has been said before, I just want to make one little point that has come to my mind in connection with all of this; that is, the original basis for tax exemption and for fraternal organizations, regardless of the definition and who is included in it. I don't think any of us question the motives and lofty purposes of any of these organizations but I do feel that they are not unique in this regard. Most people are good citizens. Most people are the members of families which are being conducted mainly in the public interest at little or no profit, and they are contributing financially to worthy projects of all kinds in the same way these groups are. They are also contributing by direct personal action, and I claim that a group of citizens has no more claim for exemption than the individual citizens themselves, who are acting along the same lines, so that I cannot see any justification for exemption for fraternal groups, regardless of the

definition.

MR. FREMAN: I will call on Mr. F. A. Schurchardt of the New Jersey Bankers' Association.

MR. SCHURCHARDT: The New Jersey Bankers Association, representing the banks of the State of New Jersey, desires to go on record as favoring the passage of Assembly Bill No. 139 and opposing the passage of Assembly Bill No. 201.

MR. FREMAN: I will call on Mr. Herbert J. Hannosh, Attorney for the Borough of Princeton.

MR. HANNOGH: Mr. Chairman and gentlemen: These hearings today are typical examples of what happens when there is attempted to be effected an extension of statutes to where they were never intended to go. We have situations here, you are going to have hearings very shortly on a warehouse act, all the trouble of which is caused by a proposed extension beyond which the statute was never intended. You will elaborate the purport of the statute and try to bring into it things that nobody ever intended should happen, and you have the same situation in this particular statute at the present time. Here you have a proposed exemption for fraternal orders. No one in the world will oppose or object to exemptions being granted to a home for crippled children or a home for the aged but statutes of this kind are not necessary for that purpose. If you have a home for the aged or if you have a home for crippled children, which some of the fraternal orders

handle, they are entitled to exemption, not because of this statute but because of other statutes. As a result of decisions under this particular statute, you find that the purport of the statute has been greatly exaggerated and extended, and the State Board of Tax Appeals was compelled, under the decisions, to grant exemptions to women's clubs and all other organizations of that kind. It is proposed to change that and it is proposed to amend it, cancel the statute or repeal the statute, and there is also another hearing here on a proposed amendment to the statute. Under this proposed amendment, you are letting yourself in for a situation far worse than you ever had before, because if up to the present time a country club could not be extended, and incidentally I think every country club in Essex County applied for an exemption, under this statute you would clearly get an exemption because all the New Jersey State Golf Club Association would have to do - they certainly are a superior body - is have by-laws and grant privileges to all the golf clubs in the State of New Jersey, and every one of them would come exactly within this definition. Certainly, you don't intend to do anything like that. When you talk about what is profit and what is not profit, just let me tell you what happened in this fraternity case that we argued before the Court of Appeals. This organization claimed it was not organized for profit. What did its books show? Its books showed, when you looked at them for the first time, that

the receipts were equal to the disbursements, but when you started to look into the disbursements you found out that since 1936, when this statute was adopted, they had paid off several thousand dollars on mortgages out of the income of this property. Well, now, if that kind of organization is not operating for profit, then I am unable to understand what kind of organization does operate for profit, and when you go into the Princeton Clubs you find the same situation, although perhaps not to as great a degree. These exemptions are granted so that the organizations proceed to keep some of their earnings and pay off capital charges; as distinguished from homes for the aged and homes for crippled children, certainly it was never intended that organizations such as we have up in Newark were entitled to exemption. Take the Mosque. It is the largest motion picture theatre in the State of New Jersey. The lodge has a place up on the top floor. Every other part of the building is rented out. Of course it has been foreclosed and it has been lost, but that organization was entitled to exemption under the statute, and under this statute as it is now drawn, the proposed amendment, it still would be entitled to it because it says all real or personal property used in the work of an organization, and I don't know how you could undertake to divide the top floor of a building from the second, third and fourth floors and say that part of it was being used for legitimate lodge purposes and part of it was not. The Eagles

in New Jersey, in Newark, or the Elks, had a ten- or fourteen-story hotel and they had a lodge room in it, and that organization was entitled to exemption. Certainly, that was never intended. If you repeal this statute and dispose of the necessity of the Court of Appeals having to go on with its decision - it will go on, anyway - and leave no statute at all, every one of these organizations that are really doing a charitable work, that are running a home for the aged and that are running a home for crippled children or a medical society, are entitled to exemption under other provisions of the statute, and this Assembly Bill No. 201 is not at all necessary.



MR. ERDMAN:

I will call on Mr. Morris Clyman, President of the New Jersey State Assessors' Association. Mr. Clyman --

MR. CLYMAN:

Members of the Taxation Committee: I come today representing the Assessors' Association of the State of New Jersey. We feel we have some right in this matter because we know in the City of Camden and also throughout the state, and are the boys who are told to go out and get the rateables. We have been to a lot of lodges throughout the state, that when you have to tax this, we have to tax that. Now, we are utterly opposed to any tax exemption for any fraternal organization. We feel that they are mostly organized for charitable purposes, true; or lodge or night club is making a profit and the lodge is re-but the charity they give is only to their own members. Now, if you're taking the same amount of money for the drink, they are also taking in public charity under their wing, we would feel as though they are exempt. In order for them to have this charity they must be a member. We feel as though the fraternal organizations are too closed. In other words, I am a member of a number of organizations myself in this state and most of the boys throughout the state as assessors are, but in order for you to become a member of this organization or any fraternal organization, you must be voted on with a possibility of a black ball give death benefits, sick benefits, and so on. That is nothing to say or vote. That to me is not public service. Now, anyone of us, regardless of color or creed or religion, can walk into any one of these places at their doors for that support of death benefits. If you walk a life insurance agent into your home and you tell him that they should be tax exempt. But fraternal organizations, the service they give is nil to the community and they ask us in return if you have the money, you can get your death benefits; and if you're running a city for all sorts of service. They ask for fire protection.

They ask for police protection. They ask for sidewalk protection.

They ask for good streets and they complain if we block the driveways from some of our defense plants in our community, "You are blocking the alleyway for a member to come in here and drink his beer at ten cents a glass." There is a very nice profit in it.

I know in the City of Camden and also throughout the state, and favor of Bill 101 and opposed to Bill 201. Thank you.

I have been to a lot of lodges throughout the state, that when you buy a glass of beer or you buy a scotch highball, you are paying

the same price as you pay outside. Therefore, if a man in a saloon or taproom or night club is making a profit and the lodge is receiving the same amount of money for the drink, they are also making a profit. They can't help but make a profit.

The reasons for our request have been well expressed this morning.

Now, in regards to charitable work, we approve of charitable work. There is no reason why anyone in this room doesn't approve of charitable work. It is not done in your local

lodges; it is done in some community far away. If we have a lodge in our town, a home just for crippled children or aged people, we have no objection to that exemption. A lot of the organizations give death benefits, sick benefits. Well, that is nothing to cry and rave about. They are paying for it. That is in their dues.

It is a cost of their dues for that support of death benefit. If

you call a life insurance agent into your home and you tell him that

you want a thousand dollar death benefit or two thousand dollars,

if you have the money, you can get your death benefit; and if you

don't have your dues for the lodge, you don't get your death benefit. You are ostracized and told you are on the so-called inactive list and if you do become sick, you don't get any sick leave benefits or death benefits.

The State Association of Assessors is in favor of Bill 139 and opposed to Bill 201. Thank you.

MR. ERDMAN: Mr. Thomas Parsonett, representing the City of Newark. Mr. Parsonett --

MR. PARSONETT: Mr. Chairman, I am instructed by the Board of Commissioners of the City of Newark to register our opposition to Assembly Bill 201, and urge the adoption of Assembly Bill 139. The reasons for our request have been well expressed this morning.

MR. ERDMAN: Mr. Edgar Warren, Borough Clerk of Princeton, just a statement as to the effect of tax exemption --

MR. WARREN: The Borough of Princeton is in favor of 139 and strongly opposed to 201. I would like to call the Committee's attention to the fact that if continued exemptions go on, we don't know where the Borough of Princeton will be. With this present exemption we will have fifty-five percent of our properties exempt from taxation.

MR. ERDMAN: George Surosky, Attorney for the City of Paterson --

MR. SUROSKY: I also want to register our approval of Bill 139 and opposition to 201 for the various reasons stated here this

morning. I could also go into a discourse of personal reasons, but I think in my own opinion sufficient reasons are submitted here today to warrant the repeal of 139 and the rejection of 201.

MR. ERDMAN: Mr. Philip Blaze of the New Jersey State Taxpayers' Association.

MR. BLAZE: For more than ten years, the New Jersey Taxpayers' Association has been deeply concerned over the growing volume of tax exempt property in this state and the resultant shifting of the tax load to those taxpayers who are not so fortunate as to have their property placed upon the tax-free rolls. As long ago as 1933 this Association issued a comprehensive study of the tax exemption picture.

More recently the Taxpayers' Association with many other organizations has taken an active part in the movement of the Tax Exemption Repeal Committee which has focused much public attention upon the problem.

Property exempted from taxation in New Jersey has not only doubled, but has re-doubled over the past two decades. In 1919 the value of property on tax exempt rolls was placed at \$316,000,000. By last year the total had climbed to \$1,168,672,11 or nearly four times as great. Last year's total of tax exempt property was 17.9 percent, or more than one-sixth of all evaluated property in the state. While state-wide figures on tax exemption in New Jersey for 1945 have not as yet been compiled, there is

every reason to believe that the trend toward increased exemptions continues. A check of the new figures on Mercer County's tax exempt property shows that the total has advanced from \$98,892,591 last year, when 29.6 percent of all property in the county was tax exempt, to \$98,925,646 this year.

Listed here is a partial list of some thirty different properties which are tax exempt under the law. I won't read these, but I will ask that they be submitted for the record.

The cost to New Jersey taxpayers of the state's liberal exemption policy is graphically illustrated by the 1936 law which permitted exemption of property of fraternal organizations. This statute was interpreted by the courts as entitling all types of social, golf and other clubs to exemption. It is estimated that under this interpretation, property valuations totaling twenty millions of dollars could be removed from the tax rolls.

The New Jersey Taxpayers' Association strongly urges legislative action not only to repeal the 1936 act providing exemption from taxation of property of social, golf and other clubs along with that of fraternal organizations, but action which will bring about revision and curtailment of the present overly-liberal policy of tax exemption followed in this state.

MR. KEDMAN: In addition, Mr. Vincent Costello, Attorney for the City of Gloucester--

MR. COSTELLO

I have been instructed by the Mayor and Common Council of Gloucester City to come here in favor of the passage of 139 and being opposed to Assembly Bill 201 for the reasons already given.

MR. ERDMAN:

Mayor Harry G. Fredennick of North Caldwell, Essex County --

MR. FREDENNICK:

I am here in opposition to 201 and in favor of 139 for the Borough of North Caldwell, New Jersey.

MR. ERDMAN:

Mr. Salvador Diana, Corporation Counsel for the City of Plainfield --

MR. DIANA:

Mr. Chairman, in behalf of Plainfield, we register our protest to 201 and we are in favor of 139. May I say that we feel that 201 is merely a nuisance. It will only cause the City Attorneys and Borough Attorneys a lot of trouble in having it declared unconstitutional, which it undoubtedly would be if enacted. It is not based on sound principles. It is arbitrary and special and it is not based on the principle of essential good to the state as a whole.

MR. ERDMAN:

Mr. L. D. Champion, City Solicitor for Pleasantville, Atlantic County --

MR. CHAMPION:

I appear for the City of Pleasantville and we object to the passage of 201 and ask for the passage of 139. May I add, in addition, our total tax exempt property approximates twenty percent of our total rateables.

MR. ERDMAN: J. B. Tomlinson, Solicitor for Bordentown --  
Mr. Tomlinson had to leave.

Mr. Vincent Losche, President of the New  
Jersey State League of Municipalities and Alderman for Morris-  
town, New Jersey --

MR. LOSCHE: I wish to protest in the name of the Mayor and  
Board of Alderman of Morristown against Bill 201 and we request  
the passage of Bill 139.

MR. ERDMAN: Mr. C. J. Miller, City Comptroller, Trenton --

MR. MILLER: Mr. Chairman and Members of the Committee: As  
representative of the City of Trenton, I wish to protest against  
the passage of Assembly Bill 201 and express our favor of Assembly  
Bill 139. The exempt property now in the City of Trenton is  
approximately twenty-five percent of the total rateables.

MR. ERDMAN: I wish to call on Mr. George E. Bohlinger,  
Solicitor for Ewing Township, Mercer County.

MR. BOHLINGER: Mr. Chairman, Ewing Township is opposed to  
the passage of Assembly 201 and is in favor of the passage of  
Assembly 139 for the same reasons that have been expressed here.  
In addition to that we have rather private reasons. We know what  
tax exemption is in Ewing Township. At the present time more than  
fifteen percent of the area of Ewing Township is tax exempt.  
It may well be that the passage of Assembly 201 will not have  
any immediate direct effect on our tax assessments except probably

to exempt five acres of our country clubs, but, nevertheless, we have a great deal of sympathy with those municipalities which will be faced with the exemptions granted by Assembly 201 if it is passed, and we feel that certainly means will be found to make tax assessed property all over the state exempt under this act if it is passed and we are heartily against it.

MR. ERDMAN: I might ask if there is anyone else who wishes to speak on our side.

MR. BURGER: Mr. Chairman, I simply have a letter from Mr. Emil Gallman, Secretary of the New Jersey Savings and Loan League, favoring Assembly Bill 139 and opposing 201. Mr. Gallman was unable to be here.

MR. ERDMAN: Mr. Chairman, as we conclude our part of the hearing, I wish to turn over to members of the Committee a study made last fall -- some of you may have copies; the new members will not -- which indicates the effect of the decisions of the court's interpretations of the State Tax Board's ruling up to that time on those municipalities that we had heard from, covering seventy-five percent of the assessed property in the state. It reveals the startling figure of at least \$20,000,000, which would go on the tax exempt rolls if action were not taken by the Legislature. Shortly after publishing this, of course, the court came along with its decision.

I also would like to leave an official statement



by the Tax Exemption Repeal Committee of some two weeks ago, which I think you have. It lists a large number of municipalities that could not be here this morning, but which have passed official resolutions favoring repeal. It also quotes from some, just a few, of the many, many editorials carried in practically every paper in the state, approving the repeal of this statute, and I think it very, very significant that not one editor has come forward with an editorial in favor of 201 or in favor of the status quo. Every single paper has come out against the status quo and in favor of repeal. I will file with you one of the typical editorials, that of the Newark Sunday Call of January 3, 1943, which sums up the case as represented in the press. Thank you, Mr. Chairman.

MR. SIMMILL:

Mr. Chairman and Members of the Committee:

My name is Elvin R. Simmill, and I am the attorney for the Borough of South Belmar, Spring Lake Heights and the Township of Wall, all of Monmouth County. I was glad to hear the gentleman from Pleasantville get up and speak his piece because I think he is the only other person who represents a town near the seaside. We say that we towns near the seashore have suffered enough from taxation. Spring Lake Heights has an assessed valuation of \$530,000, of which \$60,000 is made up of two golf clubs. Our tax rate in the past few years has been over \$80 a thousand dollars and if these golf clubs are entitled to an exemption and get an exemption

39

under this act, it is going to result in economic chaos for the Borough of Spring Lake Heights. It will mean bankruptcy for those three municipalities. I strongly urge the passage of Assembly Bill 139 and the defeat of Assembly Bill 201.

MR. FELLER: Now I might add, if any of you ladies and gentlemen have a prepared statement that you very graciously refrained from reading so as to avoid unnecessary repetition, we would like to have the statement. I would appreciate it very much if you would give it to the secretary if you so desire.

MR. FELLER: Is there anyone who finds himself or herself in the unusual position of being opposed to Assembly Bill 139 without being in favor of Assembly Bill 201?

(No response.)

If not, we will start the hearing on Assembly Bill No. 201. I would suggest that all those who are speaking to the latter bill also state their names, addresses and in what capacity they are here.

I might add that after the spokesmen have spoken on Assembly Bill 201, I would appreciate it very much if each side will appoint one person in rebuttal, if you care to answer any of the arguments advanced by the other side and we will give them the privilege of the floor.

MR. VANDERLIP: Mr. Chairman and Members of this Committee: My name is W. T. Vanderlip. I am a resident of East Orange and I appear generally for the fraternities which have been commonly recognized as operating on the lodge plan. There will be associated with us of necessity, because they are likewise in favor of Bill 201, the college fraternities, but I do not speak for them. They have a spokesman here who will put forth their case.

We will ask that you hear some of the leaders of the various crafts, but I promise you that they will be few, they will be to the point and brief, will not take long, and will not be many. I think we should go back of 1936 and

look at the situation with respect to fraternal chapters in this state to review briefly a few opinions along the way and then come on down to the 1936 statute, the inequity that made the statute necessary and the unfortunate things that happened thereafter.

The tax law under which I think most of these chapters were built was the law of 1903. That tax law, found in the Compiled Statutes of 1910, provided that all buildings used exclusively for purposes considered charitable under the common law would be entitled to exemption from taxation. Now, I needn't remind you that under the common law it was a man's right to create a charity and to select the objects of his bounty, so long as it was general there could be no complaint. Then they organized at that time the eleemosynary corporations, who existed for imparting assistance to the members of those particular bodies in order to enable them to prosecute their devotions and studies with greater ease and assiduity, and I am quoting Blackstone. This statute did not call for ownership of the property to be in the charity. The provision was simply that the building be wholly controlled and that no part of the building be hired and that the entire income be used for such charitable purposes. This act was construed in the case of *Litz versus Johnson* that the title could be separate from the charitable use.

Now, there was a case following that which held that a foreign corporation conducting a charity in this

state, even though it was a foreign corporation, would likewise be exempt. I point those two out to you because they had their effect on subsequent legislation.

It is important to observe this because practically all, if not all, fraternal temples were and are in holding corporations. This is necessary because some of them under their charters which they receive from their grand-bodies are not allowed to incorporate. Also I think it is a matter of common knowledge that many temples were erected before the amendment of which I shall presently speak, which requires ownership now to be with the charitable organization.

The next general revision of the tax law was in 1918. They took out the clause or phrase "common-law charities" and it has now given way to this: "All buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women or children, or for religious, charitable or hospital purposes, or for one or more of such purposes . . . provided same are not conducted for profit." Then follows the provision taken from the 1903 Act, providing that the building shall be wholly controlled by and the entire income therefrom be used for charitable purposes. Then we find they are beginning to take notice of the decisions, to which I have called your attention. We find a further provision that the foregoing

exemption shall apply only where the association, corporation or institution claiming exemption is:

(1) Incorporated or organized under the laws of New Jersey.

That put out the foreign corporations that were charitable, doing work in this state.

(2) The corporation had to be organized to carry on the purposes on account of which such exemption was claimed.

Of course, that barred a holding company organized simply to hold property.

(3) And either owns the property in question or has equitable control or ownership as to use and disposition, notwithstanding the legal title may be in another person.

That, you notice, follows pretty largely the language of the preceding act.

Then there was an amendment which followed that which took out this last provision of equitable control or ownership. I will proceed.

This was amended in 1925, 1927 and 1929. I think it is the 1927 amendment that did the work. You will find it in 1930 Supplement to the statutes, page 1796. The revision is much the same, but notice the changes. The statute now reads:

"Provided further, that the foregoing exemption shall apply only where the institution claiming the exemption:

"(1) Owns the property in question

"(2) Is incorporated or organized under the Laws of New Jersey, and

"(3) Is authorized to carry out the purposes on account of which such exemption is sought."

Now goes out altogether this wholly-owned, wholly-controlled question rather, and the question of equitable ownership. Now it had to be absolute, and as a result of this change many charitable organizations whose properties were in the hands of trustees and holding companies now found themselves in jeopardy of their tax exemption and some of them lost it.

First was the case of Blair Academy where the property was held by trustees, and it was held in that case that the trustees were not organized for charitable or educational purposes and for the betterment of men, women and children, and it went out. Then the Presbytery applied because it really was in charitable use and they were thrown out because of a procedure, one had to have the land and the other had to have the use; they had to be together. Now, this question of mental and moral improvement of men, women and children has been before our courts.

In 1921 the Trenton Masonic Temple close by here was built. It was built to accommodate a number of lodges. Title was in a holding company. The assessment was levied and the case was decided in 1930 (8 Misc. 778). The exemption was denied because of the holding company situation. Notice this language by the Court: "The exemption created by statute is of all buildings,

actually and exclusively used in the work of associations organized exclusively for the moral and mental improvement of men, women and children. The temple in Trenton is used exclusively by a number of organizations falling within the statutory category. If any one of the masonic organizations owned and occupied the whole building, the exemption would occur."

Now, I am aware that the Court of Errors and Appeals did not adopt that language in adopting the opinion of the Supreme Court, but their failure to adopt the language does not disturb the finding of fact which the Supreme Court made in the Trenton temple case.

Now, that the Legislature did not wish so strict an interpretation of its acts by the court is demonstrated by an amendment adopted the following year. This amendment permitted title to be in a holding company where the building was actually and exclusively used by two or more associations.

About this time the Scottish Rite Masonic Building in Newark was given exemption as meeting the test on all corners of the statute. They were organized for the moral and mental improvement of men, women and children.

In 1934 and 1935 a number of cases arose and strangely enough practically all of them in Bergen County. In August, 1936, the court held that the varied forms of activities of the Ridgewood Y.M.C.A. taken to reach the objective do not



destroy the fundamental character of the institution, and that is a finding. It is in 117 New Jersey Law, page 196. What that says to us is this: that Y.M.C.A.'s, Y.W.C.A.'s, churches and every other sort of organization do have a right to carry on athletics, do have a right to have socials, do have a right to have entertainment, they do have the right to raise money for the objects of the particular charity or institution, and the mere fact that they go outside in that manner does not destroy the fundamental character of the institution. If we are to eliminate all profit from every organization that has tax exemption, church dinners, church affairs, church socials, Y.M.C.A. work -- you know the list, why should I enumerate them -- they all would go out the window and none of us could function. We must be spiritual every minute, every moment. Well, I passed down the Jordan Valley in Palestine, and they had a great big castle over on the side of the hill you couldn't reach, and when I asked what it was, they said it was for those who had devoted one hundred percent of their time to the religion and they were over there because they didn't have balanced lives.

Before proceeding further, perhaps for the sake of the record, at least, we should take a look at the structure of fraternities. All of them have a grand or supreme body to whom they owe obedience. Sometimes this grand-body is a state body as with the Masonic fraternity. Sometimes it is national as with

Scottish Rite. The local lodges operate under charters or warrants from the grand body. Few, if any, are incorporated. The State can grant charters to do business, but it does not grant charters to do ritualistic work in any of these various fraternities, and so a subordinate lodge just cannot incorporate. Now, to hold their titles to their real estate and to their temples, they must organize subsidiary corporations which are permitted. Hence, we rarely find so far as fraternities are concerned, the use and the title in one and the same place. The strict construction of the foregoing decisions made it imperative that the lodges as such be relieved from the dilemma caused by the changing of the exemption statutes and we sought help from the legislature. The legislature saw the situation and adopted Chapter 46 of the Laws of 1936. Unfortunately this statute has travelled a rough and rugged road and has been much emasculated by the courts along the way. If a strict construction had been adhered to as heretofore, I believe much, if not all, of the present dilemma might have been avoided. It would seem as if the Judiciary went out of its way to kill the act by kindness because before the smoke of battle was cleared, we find a woman's club with no affiliation defined as a fraternal society.

First let us pause briefly to note that the statute was amended in 1937 to exclude from its operation the boarding or club houses of college fraternities, but with that we had nothing to do. Assemblyman DeVoe, then in the legislature,

introduced that bill for reasons he best knew. He lived in New Brunswick.

Now, in the case of Camden versus Camden County Board of Taxation, a Junior Order United American Mechanics case, the court held the 1936 act constitutional and used this language: "The property is admittedly used for purposes that are fraternal in character and substance, beneficial to the public generally, and the classification for exemption based on use to which the property is put." And the exemption was granted.

Now Hoboken against Hoboken Lodge B.P.O.E., following immediately after that, is to the same effect and for the same reason.

In Craftsmen's Club of Rahway, which was a Masonic body, versus Rahway, the law was upheld where the building was occupied by four different fraternal bodies and there a holding company had to fight it.

It now appears that the Greek Letter Societies, although not theretofore receiving exemption, made claim under this law and it is their law suits that brought about the condemnation of the municipalities and not without considerable justification.

The case which gives rise to the present dilemma is that of Alpha Rho Association versus New Brunswick. The petitioner was held to be a fraternity under the statute and

the 1937 amendment was held unconstitutional. In this case unfortunately the Court delved into Webster's Dictionary for a definition of "fraternity" and came up with this: "A body of men associated for their common interest, business or pleasure." - "a brotherhood" - "a society." This liberalization resulted in another startling pronouncement, this time from the State Board of Tax Appeals.

I wish now to quote from that case, the Women's Club of Little Falls against Little Falls Township, 20 Misc. 278. I am quoting now, Mr. Chairman, President Quinn.

"It appears beyond doubt that the prosecutor qualifies as a fraternal organization or lodge, being organized to assist its members and to promote moral, intellectual and special benefits." That is italicized.

The italicized portion of the quotation is the court's summation of a number of definitions of the phrase, "fraternal organization", culled from dictionaries and federal court decisions. For example, Webster's New Dictionary is cited by the court as defining a fraternity as "a body of men associated for their common interest, business, or pleasure. \* \* \* In American colleges, a student organization, either a nationally chartered society comprising many affiliated chapters or a single chapter in one institution formed chiefly to promote friendship and welfare among the members, and usually having secret rites and customs." While it may give satisfaction to those who adapted this

a name consisting of Greek letters."

It is thus apparent that the restrictive interpretation of the Exemption Act hitherto applied by this board may no longer obtain. The affirmance by the Court of Errors and Appeals of the opinion of the Supreme Court in the Alpha Rho case makes it clear that we are to accord exemption to the property of any organized body of men, or of women, or of both, who are banded together, not for pecuniary profit, but for mutual assistance, and to promote moral, intellectual or social benefits among the members if the property is used for the purposes of the organization. In view of the concurrence by Mr. Justice Brogan in the opinion of the Supreme Court in the Alpha Rho case, the statement in his opinion for the Supreme Court in the Camden case, that the property there in question was used for purposes beneficial to the public generally, can be understood only as implying that the activities of fraternal organizations, as such, are necessarily of some public benefit even if only incidentally. See where we are getting. To this extent it now appears that we are not to seek for and require as a condition for exemption any showing of benefit to the general public, over and above, or other than such as incidentally flows from the activities of a fraternal organization as defined in the opinion in the Alpha Rho case.

The Court then ends up its opinion with this remark: "While it may quite justifiably be asserted that this

ruling will let down the gates for a flood of exemption applications, relief will have to be sought from the legislature, and not from the board, in view of the decisions of the fraternity cases." And that is why we are here.

Finally in Rutgers Chapter Delta Upsilon, the 1936 Act and the 1937 Amendment, both now having been incorporated into one law under the Revised Statutes of 1937, were held to have been inseparably bound together and both fell as unconstitutional. An appeal has been filed and argued as to this last decision and now awaits final determination in the Court of Errors and Appeals; but, meanwhile, the municipalities being unwilling to risk such decision, have asked for a repealer of the law. In view of what happened following the Little Falls case, who can wonder at their alarm? The surprising thing to me is that somebody doesn't test that Little Falls case.

Meanwhile we wish to call your attention to the fact that many thousands of our citizens are members of lodges in all cities and towns. They have erected specialty buildings, buildings which cannot be put to gainful purpose without terrific expense and not at all now because of the shortage of critical materials, buildings which the courts on at least two occasions have said serve a general public purpose. They stand to lose these buildings unless a realistic view is taken of the situation. Therefore, we have tried to mend the hole in the dike

created by the Alpha Rho decision and have asked to have introduced an act which clearly defines a fraternity and leaves no doubt as to what is meant.

If we, like my good friend, Carl Erdman -- I am with him -- could return to the status which existed before the 1927 amendments, I am sure the municipalities would be satisfied, so would we. Undoubtedly the municipalities did not complain of the exemptions which existed before 1936, and, as I understand it, they do not complain now.

Let us aid the municipalities by shutting the flood gates which Chairman Quinn opened, but won't you at the same time save to your constituents the many homes which they have erected for themselves and which I think you realize do serve a public purpose. Now, brotherhood is the essence of all fraternalism, and I need not say it in this presence. You all sincerely believe that it is towards a world-wide brotherhood that we are running fast a pace. These buildings, all erected before 1936, long before 1935, -- and I would like to come back and answer some of these figures -- specialty buildings, are not the ones who are creating the difficulty and I think that can be demonstrated. With that, Mr. Chairman, I would like to close my remarks and return to my chair and introduce not more than four, probably five, people.

MR. FELLER:

We will recess and come back here at two

o'clock.

(Recess for lunch.)

MR. FELLER: We will continue the discussion on Assembly Bill No. 201.

MR. VANDERLIP: Mr. Chairman, at this time I would like to call on Mr. William J. McCormack, Past District Deputy, Benevolent Protective Order of Elks.

MR. FELLER: Where is Mr. McCormack from?

MR. MCCORMACK: The Orange Lodge of Elks in the beautiful town of West Orange.

Mr. Chairman and members of the Committee: I would like, first of all, to express my appreciation to you for a chance to speak here. It is fifteen years since I tried to get an opportunity to raise my voice in the Assembly and the voters up in Essex County, by a majority of fifty odd thousand, decided they didn't want the benefit of my speech down here.

I am neither a high priced nor an expensive lawyer. As a matter of fact, these days I am not high priced nor expensive, and very seldom paid. I notice Mr. Erdman made reference to the high priced counsel brought in by the Princeton Clubs, and I suppose you can take notice here of the fact he brought in Mr. Hannech, who is not known for his small fees, to represent Princeton on his behalf.

I represent the Benevolent and Protective Order of Elks; that is, those lodges that are in this State. I would like to say to you and to your Committee, Mr. Chairman, that this bill



does not affect all of our lodges; that a majority of our lodges will not be exempt from taxation under the bill; that few, if any, of the lodges in our larger cities will be tax exempt. I have reference to Jersey City, for instance, Newark, Elizabeth, and some of those other cities in which we have large lodges, because they mostly have public restaurants or public bars and therefore will not be exempt under the provisions of this bill. I speak for the small lodges of the order that are doing charitable work and that in their bars do not, as has been intimated here, in any manner, shape or form compete with what is now known as the tavern - it used to be the saloon when you had the pail and ten cents; now it is a tavern when you have the cocktail hour. We do not compete with them. Our bars are limited, in the lodges that will be exempt, to the use of the members. The bar seems to be the main source, as I understand, of the objection by some of those against the bill to the Elks coming within its provisions and being tax exempt. I speak of my own lodge, which I think is typical, a lodge in the City of Orange with a membership of maybe two hundred fifty. Our bar is operated at a loss of \$2,000 to \$2,500 every year because it is run merely for the convenience of the members. It is not open to the public. We could save money by not having a bar and we don't compete, don't try to compete, with any business enterprise at all, so that in that shape we are not operating, and will not operate, at a profit.

We don't intend to operate at a profit and if we ever do, we don't expect to have any tax exemptions under this bill.

I suppose, perhaps, in the Elks we have been maybe a little remiss. We are seventy-five years old February of this year. It hasn't been our practice to parade our charities or our community deeds or our social enterprises in the community. We haven't believed in it. It is necessary today because those things can't function, our machinery can't function, unless we have this tax exemption. I speak at the moment of a letter I received at my desk this morning, advising of a community enterprise in Orange that needs \$700. We would like to take care of it. It deals with children. We would be willing to take care of it. If we don't, the community will have to. We can't pay the \$700 because we just paid our taxes, under protest, because of the decision of the court. We functioned in the last war, the order at large; we chiefly financed the Salvation Army, and Miss Booth, who is the only lady who ever addressed a grand lodge meeting of Elks, spoke at Atlantic City and thanked the Elks for their financial support. We have built base hospitals, carried on crippled children's movements, without the benefit of editorials, without ostentation, all while the members have been digging into their pockets for the Red Cross and other activities the same as other citizens of the community. This is something above and beyond that.

I don't want to take too much time but I would like for a moment to give you the figures. For the work of crippled children in the past fourteen years, we have expended in the State of New Jersey alone, sixty-two Elks lodges in the State of New Jersey, \$1,840,645.37, an average of over \$151,000 a year, and it is not going down but going up, since we spent \$136,000 in the past year. Certainly, if we didn't carry on these activities and if we didn't interest ourselves in these children, somebody, some community, would have to do it. It is all very well to say, "Well, your crippled children's home is exempt." You have to give the root the exemption if these trees are going to flourish. Our homes are carried on by individual lodges; the money comes from there. If the individual lodge can't produce the money, the home itself can't go on.

That isn't our only activity, although it is perhaps the most publicized one. Somewhere now on the broken earth of North Africa there is an ambulance used by the Red Cross. On the side of that ambulance are the words, "Presented by the New Jersey State Elks Association." We raised that in a period of perhaps a month, enough money to present the ambulance. Our homes are open in many instances to veterans' organizations, rent free; we don't charge them anything. I think Trenton Lodge of Elks has a room the Red Cross uses, rent free. In many of our lodges are set up community centers for the boys in the armed forces, where they can come in

and take advantage of these community centers. New Jersey, and I think my own lodge in particular, started off the giving of baskets at Christmas time, and that spread throughout the Nation - Christmas, Easter, Thanksgiving, and other times; contributions to the hospitals, beds, iron lungs; to the Boy and Girl Scouts, the Salvation Army, and other things. The lodges in the State of New Jersey in the last ten years donated to these charitable purposes, the sixty-two lodges of the Order of Elks, \$2,316,029.39, an average of over \$231,000 a year. Certainly, if we weren't contributing that to the public, somebody would have to pay for it; it would have to come out of somebody's pocket.

I might say to you, too, gentlemen of the Committee, that despite the 1936 Act many of our lodges that were entitled to, did not take advantage of it. Some of them have found it necessary to do so because of fraternal conditions today. Some of them who might have done so, might well have done so, have gone on trying to carry themselves without ever taking advantage of the act. The idea that the Newark Lodge of Elks or the Mosque or any similar place that housed a hotel or moving picture theatre or anything else would be tax exempted at any time, as mentioned by Mr. Hannech, is absolutely ridiculous, and I am sure Mr. Hannech would be the first person to argue against any such exemption if he were on the other side of the picture.

I was interested in the reference to the country

club. Apparently, that is what they consider the Elks is. We have two purposes, charitable and patriotic. We haven't anything to do in the nature of carrying on a country club, but we have a place where a few men meet, where we may well meet in the interest of brotherhood, sit down for a little while, forget a few things, and at the same time contribute to the interest of the community.

I was quite interested in this reference to twenty million dollars going on the books, Mr. Chairman and members of the Committee, if this bill passes. I am sure we would all enjoy having Mr. Erdman break down that \$20,000,000, and if I guess rightly, he has apparently scared a lot of these little communities into the idea that golf clubs will be exempt under this bill. Well, take a look at it, page two: "A fraternal order or lodge within the meaning of this section, is defined as a grand, supreme, or superior body, either incorporated or unincorporated, and having a constitution and by-laws for the regulation and conduct of its affairs and which grants or has the powers to grant dispensations," - imagine a golf club doing that - "warrants or charters creating subordinate lodges, councils, chapters or units authorizing them to meet, transact business, hold ritualistic and initiatory ceremonies, and all regularly constituted subordinate lodges, councils, chapters or units thereof." It is ridiculous to think a golf club could come within that. By the same token, up in Essex County I think not all the golf clubs,

because I belong to one and represent one up there, made any application under the old law. This certainly is limiting; it is not nearly as broad as the law as it presently exists. Two golf clubs sought exemption and both exemptions were denied. I would like to know where the \$20,000,000 is coming from that will be added to our books if this bill is passed. I would very much like to see it broken down. At the same time, I would like to know why, if this Committee is so interested in tax exemption, they limit themselves to this one bill and don't go after the other organizations that are exempt under the provisions of the act. I would like to see a lot of these organizations show the same amount of expenditures for charity that we have shown, or come close to it. We are not asking for it back. We are asking for it for those small lodges that can't function and can't carry on these activities for the State and in their own towns unless they get this exemption. It seems to me that you have to be consistent. You are either opposed to exemption for the YMCA, the YWCA, or those other organizations - I don't suppose they would let me in the YWCA - but you have to be consistent and go after them or just leave this alone. As a matter of fact, I understand that a compromise was offered by this group that feel they are opposed to all tax exemption. I understand a compromise was offered that would have exempted some organizations but that would have held the Elks in. You are either for tax exemption or you are against

tax exemption, and you certainly have to take one position or the other. The power to tax is truly the power to destroy, and if you are going to tax us, you are going to destroy a lot of our activities and you are going to have your communities carrying them on and paying for them. We don't want to be repaid for what we have done in the past. We can't be repaid, and we don't like to come here today and ask for any favors. We prefer not to.

I am wondering what tax exempt property there is in Allentown, North Caldwell Township, for instance, Wall Township, Haledon, Far Hills, Elk Township - I don't know where that is - and some of these other organizations that have either spoken here today or expressed themselves as being in favor of the repealer and against our bill. I note particularly that a great many of the larger municipalities of this State have not expressed themselves at all as being in favor of the repealer, and we haven't gone out and conducted any publicity campaign or any organized effort to put either any pressure on you or keep ourselves splashed in the public press so we might have the benefit of any of these things, and I say that has been carried out on the other side. I don't doubt that all the municipalities in the State of New Jersey have been circularized, and I say when you take a look at the list they have, they haven't very much of an answer or very much of an expression of sentiment for their bill, and I would like to find out and have them break down what property is tax

exempt in these various municipalities. How much of it is religious property that isn't concerned here? How much is veterans' property? How much belongs to the YMCA or the YMHA or the other organizations we are not concerned with? How much property in the municipalities is involved here? I say you will find very little. I think there are only one or two of the municipalities that have either been spoken for or that are listed here in which we have any Elk lodges that are exempt. Plainfield, I think, and one other municipality are all. Certainly, Mr. Chairman, I think that you and the Committee are entitled to know a breakdown of these figures. We would be perfectly willing to give you a breakdown of ours. We would be perfectly willing to let your Committee or anybody else look over the books of these lodges for which we are seeking exemption and see whether or not we are making any profit out of these bars that are run in those instances, and I say to you they are the only ones in which we are interested, the only ones we care about.

To me, this bill is indeed a means of limiting the exemption, of definitely taking out of the tax exempt class the golf clubs, although I say to you they have been held not tax exempt in Essex County - a means of limiting your tax exemption to national fraternal organizations or similar bodies. I think those units associated with me in their own respective spheres have carried on, similar to us, many charitable activities, and I



suppose they are loath as we are to come out and display ourselves or claim ourselves any public rights because of it, but we are obliged to. I was in the Court of Appeals when the case was argued before them, the recent one that is pending now, and as Mr. Hannech spoke here you might be inclined to believe he was present. He may have assisted in the preparation of the brief, but I will say to you, gentlemen, Mr. Hannech wasn't present and did not participate in the argument before the Court of Errors and Appeals.

I don't know that there is much else I have to say except that I feel, in fairness to us, we are entitled to consideration. I think I can say the tax rates of a few of the municipalities will find themselves quite a bit increased if we are obliged to discontinue this work, and we don't like to do it. I might say at the same time that practically all our funds have come from the pockets of our own members, and it is a rare instance when we go out at any time to solicit the public in any way to help us out. I speak of the ambulance; I speak of the crippled kiddies movement; I speak of these other various charitable enterprises we are carrying on. It isn't our purpose to go out before the public. Those are monies that come from our own pockets in addition to the contributions we make the same as any other good citizen of this State to public charities and the carrying on of any social public work.

I thank you very much for the opportunity of

being here.

MR. FELLER: Will you submit to a question by Mr. Vanalstyne?

MR. McCORMACK: I will be glad to.

MR. VANALSTYNE: I believe you said a majority of the sixty-two -  
I think you used the figure, sixty-two - Elks Lodges in the State  
under Assembly Bill No. 201 would not be exempt.

MR. McCORMACK: That is right.

MR. VANALSTYNE: They would still pay taxes?

MR. McCORMACK: Yes.

MR. VANALSTYNE: Would you explain that a little more in detail,  
please?

MR. McCORMACK: Well, under your bill, in order to obtain exemption  
the building could not be used for pecuniary profit. The Newark  
Lodge, of course, rents, so they are out. Jersey City has their  
own building. We will take them or Elizabeth, as an example.  
They have a public restaurant or public bar. That immediately  
brings them into the profit class and, to us, makes them  
assessable. I think you will find that in most of the big  
lodges, with maybe one or two exceptions. I will be very glad to  
obtain from the Grand Lodge a breakdown of each lodge in the  
State, if your Committee wishes, so that you may know exactly  
which lodges we think are exempt, which lodges we think are not  
covered by the provisions of the bill. Irvington was represented  
by somebody this morning. Irvington Lodge isn't exempt and can't

be. Irvington Lodge has a public restaurant and public bar. They don't come within the exemption.

MR. VANALSTYNE: The reason is that these lodges have some public feature for pecuniary profit, is that right?

MR. McCORMACK: That is right. We feel the onles ones that are exempt are those carrying on a bar, restaurant, pool table, or something else for the use of the members, but once you step in the public class or the competition class, we don't seek exemption for them. We don't feel they get it under the bill.

MR. SHERSHIN: Mr. McCormack, where a lodge maintains quarters for members of Elks lodges so that they may put up for, say, the night, would you say in these cases those Elks lodges have their buildings exempt, or are they taxable?

MR. McCORMACK: I don't believe they are exempt under this. In fact, I think that is the situation in Jersey City, as well as the public restaurant. I don't think so.

MR. SHERSHIN: Yet it is limited only to Elks members.

MR. McCORMACK: I don't know of any of the others that do. Jersey City may.

MR. SHERSHIN: Paterson?

MR. McCORMACK: I don't know whether or not Paterson comes within the exempt class.

MR. SHERSHIN: They have a restaurant limited entirely to their own members. What is your feeling as to lodges that have their

bars limited to serving members of their particular lodge or members of lodges?

MR. McCORMACK: You couldn't limit it to your own lodge because if you are an Elk you are entitled to come in any lodge you want to. Those are the ones we are arguing for. That is the situation in my town and most of the others. We have a club license, not a public license, and we are limited in selling anything to our own members. The argument we heard this morning, that because a saloon down the street is making money the Elks Club should, is ridiculous. We can't bring in everybody. We don't want them in there. This is a matter of convenience. We are not losing \$2,000 to \$2,500 a year just for the sake of the general public. We are setting that up just for the men themselves.

MR. SMERSHIN: As a result of serving a limited number, naturally your expense of maintaining that bar is a little higher than the average public bar.

MR. McCORMACK: I would be glad to submit figures on it, to show you our original books, so there would be no question about it.

MR. FELLER: Thank you. I would like to remind those speaking for Assembly Bill No. 201 that if you have prepared statements, we would appreciate it very much if you would leave them with the secretary.

MR. VANDERLIP: I will now call on Mr. Charles A. Woodruff, who

will speak for the Independent Order of Odd Fellows.

MR. WOODRUFF: Mr. Chairman, Members of the Committee: Speaking for the Grand Lodge of Odd Fellows and subordinate bodies, I want to say the present difficulty largely grows out of two things; first, the broad language of the 1936 Act in using the term "fraternal organizations" and the very broad construction applied to those words by the State Tax Board; and secondly, the decision of the Supreme Court in the Delta Upsilon - New Brunswick case, declaring the section as it is now written in the Revised Statutes to be unconstitutional. That broad construction by the Board brought forth a very flood of exemption applications predicted by it. The Delta Upsilon decision, whether it be good or bad from the legal standpoint, has focused considerable attention on the question of exemptions, and a hurried reading might create the impression in a careless mind that most exemptions were bad. I hope there is no such impression here, for there are most justifiable instances calling for exemptions. That decision comments that a valid "exemption must needs serve the common interest in substantial particulars." Those in whom I am interested are doing exactly that thing and serving the common interest in those substantial particulars.

At the risk of having it suggested that the years are creeping on me, I would say that I have for a third of a century observed the gradual development of such services by the

subordinate lodges, which constitute the Grand Lodge, in ever gradually relieving the State to a most substantial degree in the furnishing of charitable support and care. They have been taking care of the indigent aged and infirm in a home on the outskirts of this very city, a home where they are providing for those indigent to the extent of from ninety to one hundred residents per year. In Newark the children are cared for in the Ridgeley Orphanage. In the Borough of Brielle the women folks are taking care of their aged in a home conducted by them. Likewise, there is a large general distribution of funds for the relief of those in want, providing for the sick, funeral expenses and other special relief. In a recent three-year period they expended a sum of over \$560,000 for these purposes.

I don't wish to take your time but I could, out of my experience, recite to you happenings where these very lodges, which to some degree are exempt, have provided relief and assistance that would touch the very cockles of your hearts. You may ask why all this, and it is simply just this - it takes money to do all these things, and it requires a wise, judicious handling of men, and cooperation. A course that will make possible the holding together of men for the accomplishing of these very things which tend to relieve the State from burden of expense is our course. One of the ties which hold these men together and cause them to unselfishly work for these ends is to

provide them with the means and possibilities of association. Moneys come from these associations. Those very moneys accomplish these splendid charitable acts. The accomplishment of these charitable acts at private expense are the very thing of which Justice Heher was speaking in the Delta Upsilon case; namely, relieving the public. One of the ways of holding these men and obtaining their best efforts in these splendid works is the affording of suitable places of assembly.

I think I have quite a comprehensive and exact knowledge as to the extent of these properties which would be subject to exemption. They are comparatively few. Now, bear in mind I am not speaking of other than the properties of lodges and the association of lodges as defined in the proposed Bill 201. I am saying nothing whatsoever of those that are outside the confines of lodges as we are now attempting to describe them in this bill, so don't confuse what I am discussing with what may be another field. In addition, I want to point out to you emphatically that it is regretful that the lodge homes or meeting places or buildings which have been subject to exemption are rapidly decreasing, and it is hoped that nothing will be done to make greater that decrease.

It is well known that lodges are having their difficulties. Many lodge properties have been lost by foreclosures. They are forced to a brave struggle in meeting what they feel are their charitable obligations. Many of those who own their lodge

homes are only able to do so because of the exemption afforded. These lodge homes are the very family ties keeping together the organizations producing the funds which go to help relieve what might otherwise be a State obligation. Take away the exemption and the few lodge homes that are left will doubtless become a thing of the past.

I have seen the development of the exemption contained in the supplement of 1886. It grew gradually as the merits of the charitable work of the lodges became apparent. That supplement was intended for those instrumentalities working under the lodge system. Loose language spoke of them as fraternal organizations, which of course they were, but much more. The proposed act is intended to bring back and place with lodges, as most of us understand them, the exemption, and not have it spread all over the face of the map. Some may ask why confine it strictly to lodges as interpreted in the proposed bill. The answer to that is that lodges so constituted and there defined have as their very concept the principle and practice of charity. Fraternal organizations and associations may be accomplishing most splendid ends but the bill is so drawn that the classification defined encompasses those who are substantially serving the common interest and relieving the common burden.

The Odd Fellows Lodges of this State are aiding in the common ends of which I have just spoken, and we respectfully ask this Committee to see that nothing is done to disturb



such exemption as they now have, which would be continued by the passage of the proposed Bill 201, which we believe likewise cures the evils heretofore existing.

MR. FELLER: Would you submit to a question by Mr. VanAlstyne?

MR. WOODRUFF: Yes, sir.

MR. VANALSTYNE: In your interpretation of Assembly Bill No. 201, would the so-called college fraternity be exempt from taxation?

MR. WOODRUFF: As a lodge, if they are a lodge, yes.. If they are for pecuniary profit, no. That may be a very important thing for the Committee to consider, if they have it in mind.

MR. VANALSTYNE: I just wanted to get your interpretation.

MR. WOODRUFF: As to golf clubs, that is absolutely out of the question. Anyone who has ever had experience with a country club or golf club knows there is sufficient superior authority inside the golf club itself. You don't need any superior body. You won't get it.

MR. VANALSTYNE: Thank you.

MR. VANDERLIP: Mr. Ray Lucht, representing the Knights of Columbus Councils in New Jersey--

MR. FELLER: I have been informed that Mr. Lucht had to leave but asked that the organization he represents be recorded in favor of the passage of Assembly Bill No. 201.

MR. VANDERLIP: May I ask that you hear Walter S. Gray, Grand Master Mason for the State of New Jersey. Mr. Gray is from Irvington, New Jersey.

MR. GRAY:

Mr. Chairman, Members of the Committee; It was my good fortune, or perhaps misfortune, to be a member of the New Jersey Legislature in 1936, wherein you will find myself as recorded in favor of the Jamieson Bill which has brought about this apparent furor today and for which I, as one who voted therefor, make no apology, because at the time that bill was passed, I question whether there was a member of the Assembly then in favor of it who for a moment considered or suspected there would be the barnacles that have arisen therefrom today. I would be as prompt as is the Mayor of Princeton or any of the galaxy of men whose names have been presented to us today to be opposed to those things which sap the tax money from the public without due compensation therefor, and it is because I feel that way about it that I want to represent the case in behalf of the Masonic Fraternity of this State, an organization that is one hundred percent patriotic, and in no sense do I infer that no other organization is, and one hundred percent charitable.

We have 278 lodges in the State of New Jersey, with a membership of 75,125 men, all of whom, I must confess, are not in favor of the action that is requested by us today, because some of those who are speaking upon the other side of the fence are just as sincere in argumentation as those representing the grand lodges and their subordinate lodges today. Nevertheless, I point out to you that the Masonic Fraternity, which originated

in this State in 1786, has from that date to this been recognized and known as one of those doing the utmost in charity. In our lodges, in our lodge buildings, in our temples, there are no bars, there is no opportunity for commercial profit, and we speak in behalf of this bill only in the case of those temples and lodge buildings from which there is no pecuniary profit derived. I would not, for a minute, be represented as one who feels that a lodge temple, subordinate or grand, should not pay its tax bill if it has a pecuniary profit coming therefrom. The Masons of this State in one year paid into the coffers of the subordinate lodges or of the grand lodge some \$630,000. Of that amount of money, some \$265,000 goes to the grand lodge. Of the \$265,000 which goes to the grand lodge, approximately \$35,000 is used for the operating expenses thereof, and the balance of \$230,000, representing 87% of the receipts received by the grand lodge, is used entirely for charitable purposes. What are these charitable purposes? The Grand lodge of New Jersey this year has paid into a fund to provide service centers for all men in uniform, not only Masons but any man who wears the uniform of Uncle Sam. Right here in the City of Trenton, in its Masonic Temple, is located one of these centers, through the doors of which have passed during the past year no less than 75,000 men, and I question whether more than 3,000 of the 75,000 were members of our fraternity, showing to you, I think, quite clearly that

the Masonic fraternity is not even confining its charitable work to the members thereof but that it is as widespread as it can possibly be. In addition, I point out to you that the grand lodge and subordinate lodges of this State operate Masonic employment bureaus. There are nine of them in nine counties of this State, operated at a cost of \$15,000 annually, and not entirely confined to the securing of employment for members of the Masonic fraternity. The 278 individual lodges, whose annual dues perhaps average \$9 per man, have their own charitable programs to take care of, and out of the \$9 they sent into grand lodge approximately \$2.65, which represents the \$268,000 I mentioned to you a moment ago. This same group of Masons throughout the State has invested in what we all invest in, war bonds, to the extent of \$25,000,000. Almost every subordinate lodge in the State of New Jersey has purchased the same war bonds. It maintains at Burlington a Masonic Home, which we know of course is tax exempt, but let me point out to you that the Masonic Home in Burlington is supported financially by the representatives of every lodge within the State of New Jersey and if you are going to exempt the Masonic Home alone and demand taxes of every lodge, every temple in the State, you are going to find the result will be the closing of your lodge buildings and the lodge temples throughout the State, even the one in Trenton. If you are going to assess that what the State tax authorities say should be the proper amount;

namely, 100% of valuation, it will cost 2600 members of the district here no less than \$16 a year to pay that bill, and these members are digging deeply into their pockets in order that the State of New Jersey shall not be called upon to support various other agencies that are so important, so vital, to the welfare of mankind.

I submit to you, ladies and gentlemen, that it is high time the members of this group, this Legislature, and in fact all the men here represented, got a little bit of the spirit of international conscience. There is indeed a great brotherhood and it is not confined entirely to the Masonic fraternity; it is represented by the Knights of Columbus, it is represented by the Odd Fellows, the Junior Order of United American Mechanics. We might perhaps name eighty or a hundred more whose job it is and who are doing the job of making the world a little better place because they have each lived therein. For us to pick upon a fraternal organization which has for a number of years been able to secure the rights and privileges of tax exemption when so many others have not received them is rather inconsistent with the proceedings, and I ask you in the name of these Masons of New Jersey to consider seriously the fact that unless there is an exemption allowed to these Masonic organizations, you are going to close temples, perhaps close lodges, and let the State assume a cost which today is tremendous.

MR. VANDERLIP:

Thank you, Mr. Gray.

MR. VANDERLIP:

Mr. Chairman, I have here and wish to file with you a letter from the Great Council of New Jersey, of the Improved Order of Red Men, signed by William L. Jones, the Great Trustee. These letters, of course, are opposed to 139 and for 201 you understand. I have letters from the State Council of New Jersey, Junior Order of United American Mechanics; the State Council of New Jersey, Daughters of America; the State of New Jersey Federation of American Patriotic Societies; and their reasons are attached thereto, which I will file. I have then on behalf of the New Jersey Fraternal Congress, which is composed of eighty-seven fraternal beneficial societies operating in the State of New Jersey under the supervision of the Department of Banking and Insurance, this which I desire to file. Their reason, of course, is that they are beneficial organizations and have large insurance funds which might be subject to taxation under the personal property provisions of the law.

Now then, I am not going to ask any others to represent the fraternities. I do have a man here who would like to be heard, J. Harold Johnson. He is a retiring faculty advisor of Rutgers fraternities, who will speak for these organizations.

MR. JOHNSON:

Mr. Chairman, Members of the Committee, ladies and gentlemen: For the past four years I have been the faculty advisor to the fraternities on the Rutgers campus. I can assure our neighbor, Dr. Erdman, that the undergraduate members of these

fraternities are tremendously interested in tax exemptions. It would have taken only half a word, I think, to have filled the balconies with those students who would have liked an afternoon off from their classes. In our monthly meetings as we meet on the campus, especially after we have some publicity on the subject in our local newspaper, it is very evident that they are tremendously interested and these boys are interested because they are the active members of the college fraternities on the Rutgers campus. The boys in my own house, for instance, those living there, pay \$60 apiece towards the tax bill for the house in which they live. It is obvious, therefore, that they are tremendously interested. It is true that the alumni of our college fraternities have been generous in supplying the funds with which these specialty buildings have been erected. Because, as one of the speakers said this morning about another type of building, our fraternity houses are all specialty buildings when they have been built for this particular purpose. It is also true -- and by the way, most of the mortgages of the fraternity houses are held not by alumni, although some of them have bought bonds, building bonds, but by the banks and financial institutions of the city -- that the fraternities on the Rutgers campus stand ready to follow the example of the university itself, by making a contribution to the City of New Brunswick each year for the essential services that the fraternities are receiving from the City. They have stated that publicly as

far back as a year ago to the officials of the City. Mr. Ewing's statement this morning that there are some twenty-five fraternities involved and about a million dollars in rateables is apparently a slip of the tongue. There are only sixteen who actually own their houses and the assessed valuation is somewhat slightly less than a half million dollars. Perhaps \$18,000 to \$20,000 in yearly taxes is involved.

The fraternities at Rutgers are an integral part of the university. They house this year 425 men compared with 450 that are housed in university dormitories. This is the first year in the hundred and seventy-five years of the life of the university that more have been housed in dormitories than in the fraternity houses because the university was successful in securing a former private dwelling on College Avenue, which could be used for dormitory purposes. In fact, Rutgers was one hundred and fifty years old before they erected any dormitories at all and it has been the fraternities that have been there all these years in increasing number as the student body has grown that have made it possible for students to live on the campus. If the fraternity houses are unable to operate, provision must be found for the four hundred and twenty-five or four hundred and fifty men elsewhere. If that means that the college has to build more dormitories, that means these buildings will be tax exempt anyway. At the present time some six hundred of the undergraduates are eating in the



fraternity houses as compared with about three hundred who eat in the college cafeteria.

Mr. Ewing implied that there is competition between the fraternity houses and the local boardinghouse keepers. That is not true. The university advertises each year, urging householders to open their homes to college students because the number cannot be accommodated in either the fraternity houses or in the dormitories. As a matter of fact, for a period of several years the office of the Dean of Men found it necessary to employ a man to visit houses in the neighborhood of the college campus in order to urge people to open their homes to take care of our students. There is no competition, I assure you, between the boardinghouse keepers or owners of private homes and the fraternities, and I think that any member of the university administration would be very quick to say to you that without the fraternity houses, the housing and feeding of students on a normal basis, not of course when they are in uniform and when the government is paying the bill, would be a very serious problem to the university. Of course, the college fraternities do not claim to be charitable organizations in the sense the other fraternities have talked about this morning. College fraternities are organized on the lodge basis and we believe qualify thoroughly, as was determined by the court in the Alpha Rho case, as fraternal orders within the meaning of that act.

College fraternities, as they are operated on the Rutgers campus, and I am not speaking of eating clubs, are part of the educational organization of the campus because they cater to a side of a student's development which the university does not attempt in any great degree to help. I mean by that that colleges and universities are set up primarily for the mental and the intellectual development of their students. They exist primarily for the classroom and the faculty so that the student can get book instruction, laboratory instruction, lecture instruction in the classroom, instruction primarily of the mind and the intellect. We know, of course, that it takes more than that for a young man to get along in this world. It is the function of college fraternities, and it was one of the reasons that they came into existence, to help young men develop their personalities, to help them get along with one another, to help them learn how to live in a socialized civilization, where they can learn to get along, where they can hold their meetings and operate their houses as very small examples of democratic groups. We believe that they are just as important a part of the university as the classroom. They exist in colleges and universities the country over because by and large educators admit that and know that that is true. If you talk to the Dean of Men on our Rutgers campus, he will tell you that the discipline problems in the fraternities are much easier to handle than they are in the dormitories because

of the pride that goes with having a good house, a house with a good reputation.

I realize the time is awfully short. I would like very much to be able to give a talk about what I know fraternities do, but perhaps in the time allotted that is all I can do.

MR. VANDERLIP: Mr. Chairman, that ends our list of speakers.

MR. FELLER: Thank you. Is there anybody here who is opposed to Assembly 201 without being in favor of Assembly 189.

MR. KLINE: Mr. Chairman, I would just like to make a statement.

MR. FELLER: May I have your name.

MR. KLINE: My name is Kline and I am a real estate man, a member of the State Association and a member of the Executive Committee, and they were taking a vote of the Executive Committee comprising seven vice-presidents and seven executive committeemen and the president and the secretary and treasurer, and I voted in opposition. I am in favor of 201. I am in favor of the fraternal organizations exemption and I just want to express this. It is easy enough to represent a group of men, and they have certain rules and regulations, but I am expressing my own personal opinion as a member of the Trenton Real Estate Board. I am also a member of the State Association and I voted against a motion that was made over there. Of course, I lost. I was in the

minority. I thought I would let the Commission know my stand as a real estate man and a member of the State Association. I am in favor, and all my friends I have here in Trenton, are in favor, of 201 and we want to keep the exemptions of those properties. Those properties are essential to the life of the community. I pity the community that doesn't have fraternal organizations to back the community. That is my stand.

MR. McALLISTER: My name is McAllister. I come from Camden. I am one of the minority members of the realtors' groups of the state and I was surprised to learn that our State Association had lent itself to the argument on such a subject as is here today. Why? In the long past the question of appraising properties was rather up to the individual appraisors. These desks may represent lots as laid out by someone, maybe by an engineer of competence and maybe not, and sometimes they missed here and there a lot or house and sometimes for years it would go along and that house and that lot was not assessed and not taxed. Don't think that I am thinking that that is done purposely, but it was done. Today the modern appraisal is done according to maps prepared by engineers. They are rather accurate. Now, when they made the map of the City of Trenton, undoubtedly they put on this building we are now in. It is the State House. It is owned by us. The annexes, etc., are all on that map. Now then, someone conceived the idea that it had a value. Yes, sure. But I might

say I have two children and somebody has said that each child is worth \$100,000. I am worth \$200,000 and \$4 in my pocket, but it doesn't mean anything. Now, does the City of Trenton, for instance, on that same idea want to have this group of buildings removed from the City of Trenton to some other municipality if our laws permitted that? They can make it tax exempt because in the City of Trenton they are getting certain benefits. The individual business man, the home owner are all benefited by reason of the fact that these buildings are here in Trenton. I would like much that they were in Camden. It would make Camden an outstanding community. Our court houses all over the state are also put as a valued item on these tax maps.

Now, we have heard carelessly, and this is the point, gentlemen, I wish to bring to your attention, not that you do not already know it, but there have been so many remarks, about these millions, these Amos and Andy millions, piling way up that are tax exempt. Of course the State House is tax exempt. It has a value. There is no tax coming from it, but we wouldn't do without it. Our court houses are tax exempt. I was talking to a fellow realtor down in Camden County and some election was coming about and some man said there was over \$2,000,000 worth of tax exempt property in the county. When you break it down, it is the county institutions, the almshouse, tuberculosis hospital, etc. Well, that township wouldn't want to be without it. Just threaten

to take it away and you would find almost all the citizens would object including those who are representing the tax assessors.

So if we could get a breakdown, if the State Board of Realtors were to take for their program of several years that they are going to break down these non-taxable properties, they would do an outstanding job for the state. I personally would be willing to have my dues increased in order to contribute to such a fund, not to have the legislature direct the Realtor Board to do it, but do it ourselves and present to the citizens of the state something that is a finished program. Then we would have broken down these lodges.

Mr. Kline just said he wouldn't like to be in a community where there are no fraternal organizations. Neither would you want to be in a community where there were no churches. It all has its interrelating factors in our scheme of society. Yes, all these organizations contribute something to our moral and spiritual uplift. Things that the church does not contribute are contributed by these fraternal organizations and they should have some consideration because you and I and someone else, perhaps 'most everyone here, belongs in some way or other or their relatives belong to some fraternal organization, and the whole membership throughout the state would be rather tremendous in size. When you break it down to the actual dollar assessed valuation of these fraternal properties, Committeemen, I am quite sure you will find

it is rather insignificant in comparison to all these millions recited as being tax exempt. I thank you for the privilege.

MR. FELLER: Is there anyone else who desires to speak before we go into the rebuttal? Mayor Erdman, are you prepared to rebut?

MR. ERDMAN: Mr. Chairman and Members of the Committee: I am very glad that this afternoon the argument was reduced right down again to the fundamentals. That was shown by the fact that we heard from the Rutgers fraternities at last. There was a very impassioned plea for the Rutgers fraternities, the fact that they are an integral part of the university, the fact that it was part of the great educational process, that it was fine training for these boys. Of course, but so are a great many other things. I think part of the training of the boys at Princeton, unfortunately maybe, but some of them think it is very necessary, has to do with their fraternal and convivial hours at the Nassau Tavern. But that is no argument for exempting the Nassau Tavern. I might say if they are so important to the educational system, they ought to be an integral part of it; they should be taken over by the university. You can't have your cake and eat it too. The college clubs in Princeton have no right to tax exemption, but they have the same right that the college fraternities have by exactly the same argument; and if you exempt one, you have to exempt the other. Yet we have very often said there would be no objection to

the tax exemption of these clubs were they an integral part of the institution, managed, run and students assigned to them by the university. But who are they for? It is a special privilege in addition to that of being a member of a university. You have to be admitted by election. You have to get in by a special process. It is those few, in the case of fraternities -- maybe it is half the membership of Rutgers; I am not acquainted with the exact facts; but whether it is two-thirds or nine-tenths, there are always some left out. After all that is not a democratic process. Therefore, I submit to you that it is not a good argument to advance that these fraternal organizations at the university or these clubs at Princeton have any right to tax exemption. They do not deserve it and on any basis of reason or any basis of public policy they are not entitled to it. I haven't heard any argument advanced as to why they should be given it except that they are part of the lovely college scene and I don't think that that is any answer. The reason I am glad it was coupled with the fraternal groups, and it was admitted by one of the spokesmen in behalf of Assembly 201 that Assembly 201 would admit these college fraternities to the privilege of tax exemption, is that it simply illustrates the point we have been trying to make all morning; namely, that you cannot draft a bill that does not admit large groups of those that you don't intend to admit because it cannot be done under our constitutional system.



and it cannot be done under the decisions of our courts. That is the difficulty with this whole problem and I repeat again that it is necessary to abelish exemption for the original privileged few because it is impossible to keep out those whom you may not wish to admit, but who cannot be kept out simply by the definition that you have here. This definition would admit any club, any group that wanted to get together and organize along this general setup. Now it is very well for those of us who belong to Masonic groups to say, "Oh, we understand what all this means. That is very clear. How could anybody organize? Don't be ridiculous and say you can organize along that line unless you have always been organized along that line." There is nothing in this act that says this only applies to those that were founded before 1800. There is nothing in here to say you can't organize along this fashion tomorrow or next week or whenever the bill becomes effective. Therefore, any group -- and I repeat again, except that a golf club would be limited to only five acres by this bill -- as far as those five acres went, would still have the right to grant themselves any dispensation, etc. It may sound funny to say why can't a golf club grant itself a dispensation or grant it to some of its subordinate golf constituent organizations. Of course they can. You may say that is just an evasion of the law. Maybe it would be, but nonetheless it would be legal and constitutional, and I repeat that this definition here will not do a single

thing. It will not keep out the college fraternities at Rutgers. It will not keep out the college clubs at Princeton. It will not keep out any organization which wishes to organize along the lines set down in that bill. We who are close to the forest may not see it because of the trees, but, nonetheless, those who are far away and looking for a privilege to which they are not entitled under any stretch of the imagination may well organize along these lines and you can't prevent them from getting tax exemption.

Now, to get back a moment to this argument that the reason for giving tax exemption is that these organizations are performing beneficial services to the community, we all admit that. Of course they are performing beneficial services to the community. Of course we are all proud and glad to belong to them, but we also belong to many other organizations that are performing beneficial services to the community, but we don't think that is any reason for asking for tax exemption. Somebody came here and said they were not here asking any favor from the Legislature. I think Mr. McCormack of Orange said that he wasn't asking any favor from the Legislature. No, not much, only the very greatest favor that any legislative body can grant, and that is the favor of tax exemption. If that is not a favor, I don't know what a governmental favor is. I want to repeat, the grant of tax exemption is nothing more nor less than a cash grant

in reverse. In other words, if your taxes would be a hundred dollars on your building and you don't have to pay taxes, you are granted by the government one hundred dollars. You can't get away from that fact. That is a grant of a very grave and very serious privilege. Therefore, I think the Legislature should ask themselves -- put this thing in reverse -- would we be willing to vote to any one of these organizations, no matter how worthy we all agree they are, a cash donation. I don't think you would.

I would also like to say that many organizations that don't happen to own property also do the very things that we applaud and are glad to take part in, those of us who are members of these great organizations. There are many other organizations, charitable in nature and entirely charitable in nature, but simply because they don't happen to own property and because the Legislature uses this reverse English way of making a grant, do not receive a cash donation in reverse from the Legislature. You have to first of all own property to get this particular grant of public moneys because that is what it is, call it what we will. Tax exemption is simply a grant of cash in reverse.

We have heard something of the fact of universal brotherhood. Naturally anything which promotes universal brotherhood we are all interested in and we are all in favor of, but that is no argument for universal tax exemption which would go along

with it. Furthermore, I must repeat that I don't think universal brotherhood requires a bar, even though it has only a club license, to assist in promoting that universal brotherhood. You may think I am a prohibitionist because I talk about bars so much, although I am not, but I simply do that to illustrate the point we have to keep coming back to; namely, that you cannot classify in this act or any other act simply by the type of organization. If you are going to grant a privilege, and the greatest privilege that you can grant, which is tax exemption, particularly in these days, you have got to use some different device for attempting to distinguish, and the only device the courts have said they will uphold is that device which distinguishes the uses to which you are going to put your property. If the Legislature has any intention of continuing this type of legislation, they must resort to a different method of attempting to classify than that found in this definition which means just nothing. With all due reverence and respect to the organizations which I reverence, which are here this afternoon, I must repeat the words that no amount of mumbo jumbo in a law is going to keep other groups from organizing along those lines that have no right to it and getting it. Therefore, if you are going to do anything, you have got to use some different method of classification. You may say, "Why we have it in there. We use the pecuniary profit test." But I repeat again what I said this morning that the definition of pecuniary profit has been so

misconstrued, if you want to use that word, by the State Tax Board and the courts, that it no longer has the original meaning in the very minds of the men who drafted the 1936 Act. Mr. Johnson said that Rutgers alumni weren't very much interested, some of them might have been, but here is the statement regarding the club house, fraternity house, in here. It just sums up and shows in all since 1936, \$8600 has been paid to alumni bond holders out of the receipts of the fraternity in question, the Delta Upsilon, in this particular case. I don't know why that wasn't profit, but the courts have held that wasn't profit. The courts have held that you can go ahead and pay back to your alumni who have originally been beneficent and put up the money for constructing these buildings, you can pay back to them their original money and it isn't profit. That is in the law and it does show that the word "profit" is not enough. You have got to go a lot further if you are going to attempt to classify.

Summing up I simply come back again to the main point; namely, that there has been nothing shown, in my estimation, here today that justifies the grant of tax exemption to these organizations that would not equally be used in an argument for asking for tax exemption for a great many individuals and a great many groups. What individual here hasn't participated in the great drives for their Community Chest? What other groups haven't contributed to charitable purposes in their community, and yet

that is no argument for tax exemption. I can name our golf club in Princeton, which last June got together in one day and raised \$1400 for a local charitable purpose. That is a considerable amount for one organisation, but I don't think that is an argument for tax exempting the Springdale Golf Club of Princeton. That same argument goes for a great many other groups and there are going to be a great many groups that could band together and organise along these lines and ask for tax exemption. It is very well to say, oh, that is a silly argument and that is reductio ad absurdum of the whole argument. I again repeat, if you leave the bill wide open the way it is now, that is what you are going to get and you can't get away from it because when anybody sees a privilege as great as tax exemption lurking around the corner, they are going around that corner after it hell bent for election. So I hope you will consider this matter very, very carefully before you report Assembly 201 out of committee. I respectfully submit in its present form it will lead to endless litigation on the part of municipal officials, or rather, they will have to support endless litigation and it is costly. Someone asked this morning why we hadn't pursued the case of the Women's Club of Little Falls further. The reason that particular community was unable to press that case was it was going to cost too much to pursue it any further and they simply gave up the sponge, and that is true of a great many of these organisations, rather

municipalities. They cannot be continually bothered by having to pay out large sums of money in attorneys' fees because a bill is drafted in such a way that it allows any group to get together and claim the privilege of tax exemption. So it is up to the Legislature to put a stop to this endless litigation which has gone on now for a number of years. It is getting more and more costly. It is involving more and more municipalities, more and more organisations, and the time to halt it is now.

MR. VOGEL: I would like to ask him a question.

MR. FELLER: Will you submit to a question?

MR. ERDMAN: Yes.

MR. VOGEL: Mr. Erdman, as a practical matter, if it should develop that most of these realty holdings would become liquidated by reason of this tax, would you alter your views?

MR. ERDMAN: I think there would be a great many uses found for some of these organizations, such as Rutgers clubs, fraternities, Princeton clubs, others. As I say, they might revert to the university. Maybe that is where they ought to be. If so, well and good. Some other use might be found for other organizations; I don't know. I do know that you should place a stop upon the use of them for purposes other than that which the Legislature originally intended they should be used.

MR. VOGEL: I didn't want to press you particularly for an answer. The reason that motivated my asking the question is

that I remember four or five years ago, for instance, in behalf of the railroad tax compromise, it was urged very vigorously that the Legislature would have to be practical because if they insisted upon maintaining the then tax imposition, the railroads would become liquidated. That is the reason I asked this question.

MR. ERDMAN: I wouldn't know the answer to that. I know it would be very difficult as many of the men on the other side have pointed out for certain of these organizations to carry on. That will be very, very unfortunate. But I submit that it is a greater misfortune to the taxpayers of the state to have to admit millions of dollars, and I say millions of dollars, to the rolls that do not deserve in any stretch of the imagination this exemption. That is the reason that I don't see how you can get around it if you are going to have the bill the way it is.

MR. SHERSHIN: Is it your feeling that none of these organizations are entitled to exemption?

MR. ERDMAN: I see no justification for exemption of any of these organizations that cannot be applied to a great many other organizations that don't happen to be included in the bill.

MR. SHERSHIN: As it is presently written?

MR. ERDMAN: As presently written. I think the argument was well made that this was a matter of history and grew out of the common law, and in the very words which Mr. Vanderlip used, the entire income could be used for charitable purposes. I am



very glad to see that Mr. Gray pointed out that that was practically the situation in connection with the Masonic groups. If that be so, they are entitled to exemption under other laws. They don't have to come under this law. They are entitled to exemption under existing laws, which may be the reason they have come down over a long period of years with the privilege of tax exemption because they are truly charitable organizations one hundred percent, and therefore entitled to it as such. If that be the intent of the bill, why isn't something put in the bill to the effect that fifty, sixty, seventy percent of the total income of that organization shall go to charitable purposes.

We had some very interesting figures as to how much charitable work was being done by other organizations, but no statement that that constituted fifty percent of their total gross income; charitable purpose was an incidental purpose in the total receipts. The fraternal purpose of getting together and good fellowship was probably a very large percent, and I don't see that simply because you have a charitable end in view and contribute towards that charitable end that is any reason for exempting the place from which the charity originates. Charity will go on whether you take away from that place of origin the privilege of exemption or not. Charity is certainly something much greater than existing merely on the basis of a privilege of the state. I am not worried about the future of charity, no

matter which way these bills are dealt with.

MR. SHERSHIN: This Committee is very anxious to work this out to the best interest of the public and if you have any idea which might be incorporated in the Committee Substitute, we would be glad -- I know I as one member would be glad -- to have you write in to the Committee and ask them to consider it as a Committee Substitute or change the bill in some manner to meet the needs of the entire state.

MR. ERDMAN: Well, I would be glad to confer with the Committee, but I don't see that the way Assembly 201 -- there is just no middle ground and I certainly think the greatest public good is served by the passage of Assembly Bill 159.

MR. VOGEL: As I understand it, your opposition primarily is not to exempting a class or certain classes of fraternal groups; your opposition is directed to 201 because it may include organizations not contemplated by the act.

MR. ERDMAN: I think it goes a little further than that. I think it goes to this extent, that the opposition to 201 is based on a more fundamental principle. It is based on the principle that only those organizations which are strictly charitable should be entitled to exemption. Now, as I say, if you have a definition in the bill which makes that clear, that will be one thing, but I don't really believe that is necessary because

they would be entitled to it under existing laws and you don't need to go into this bill or any other. You have got that under the existing revised statutes. I think that the issue has been clouded a little bit by this appeal to the viewpoint of charity because we don't need additional legislation. If they are charitable, there are the law books; they grant exemption as it is.

MR. FELLER: It has been stated here that homes in New Jersey are taxed higher than in any other state in the union. Is that due to these exemptions that we are discussing now? Is it due to say, overlooked assessments, or a combination of both?

MR. REDMAN: I think it is due to the New Jersey tax system to which of course all these factors are contributory. Take in Princeton, it was reported here this morning -- I must refer back again if you will pardon me a moment -- that 56% of our property is tax exempt. Now, we had a very nice argument from Mr. McAllister of Camden showing that that is all right, certainly. Think what Princeton would be if you didn't have the university; it wouldn't be worth anything. But that is not a good argument because that is based on the theory that we have a perfect tax system. He sidesteps the point that the only place that the Borough of Princeton can raise money is in the property in the municipality; and if you reduce it further and further, the amount of tax exempt property, you would still have just as many governmental services to supply and therefore it becomes harder and harder and harder for remaining tax-

payers to carry that load. Mr. McAllister's argument might be all right if we had an idealistic and perfect tax system in which it didn't make any difference to the Borough of Princeton whether you had ninety-nine percent of the property tax exempt or none of it tax exempt, the taxpayer wouldn't have to pay any more because the whole community would be paying the total tax burden. If you had that kind of a system, why, then, I would agree with Mr. McAllister, but where you have a little water-tight, isolated system of taxation, where each municipality must raise the major portion of its revenues from the remaining property that is taxable in that community, then every dollar that goes off the tax exempt rolls is obviously that much more of a burden on the remaining taxpayers. Therefore, I say although New Jersey probably has a higher burden on its real estate taxpayers than any other state, it is due partly to the amount of tax exempt property; but it is due also to the fact that whether rightly or wrongly, we simply rely more heavily on that particular source of revenue to support all of our local and county governments.

MR. VOGEL:                      You don't subscribe to the theory that if it cost more, it must be worth more.

MR. FELLER:                      Thank you. Mr. Vanderlip --

MEMBER OF AUDIENCE:              I think Assemblyman Sherahin asked Mr. McAllister whether the Paterson Lodge of Elks has claimed exemption. May I say they did make a claim to the county board, which was rejected,

and it is now up on appeal, not only under this section which was declared unconstitutional, but they also claim they are a charitable organization. It is now on appeal before the State Board.

MR. FELLER: Mr. Vanderlip --

MR. VANDERLIP: May I speak from here. I can make myself heard I am sure. In the first place you have before you this paper from the Tax Exemption Repeal Committee. It has a number of because's on there and I would like to address myself to those for a moment and then pick up some loose ends. But before touching any of that, I think I heard a question asked this morning as to what the law in New York State was on tax exemption. It was not answered. I have not the law before me, but I remember it fairly well. Fraternal temples in New York State are exempt from taxation where the net income goes entirely to charity. Now, that does not permit of any part of that income going to reduce or by way of payment on mortgages. That is the law in New York State on the exemption of temples and that is the law which exempts the temple of the Masonic Fraternity on the corner of 6th Avenue and 23rd Street. All the net income of that large office building goes to the Utica Home in Utica, New York, where a great number of people, up in the hundreds, are taken care of without any charge whatever to themselves.

Now, may I address myself to this document here.

We are accused of propaganda and lawyers and everything else. I think if Mr. Erdman had taken the money that was put in this and had given it over to Little Falls so that they could have fought that tax case up there, it might not be necessary for us to be here.

MR. ERDMAN: It cost me about \$40, Bill, to print the whole thing.

MR. VANDERLIP: There are some lawyers up there who would have fought your case for nothing. I would have helped you on that. They have gone so far astray with this law; someone must pull us back and I think you gentlemen can do it.

He says here first, this bill should be passed, referring to 189, because the amount of tax exempt property has been increasing at the rate of twenty-three and one-half millions of dollars per year for the past seven years. I was Grand Master of Masons in 1928 and 1929 and only one or two temples to my knowledge, and they were small ones, remodeled buildings, have been built since that time. So certainly, whatever they are talking about here in the way of these exemptions, they can't put that burden on us. I don't say they don't exist. I don't know; they don't tell us. The figures are here and the figures belie the situation. We don't have any such amount of new temples in New Jersey in all of the fraternities for the period he speaks of here, 1935 up to date.

Now, he says, the second thing, "Because the continual increase in the amount of tax exempt property is creating an additional tax burden for every taxpayer." We say amen. We would like to help you if we can in bringing about a correction of this condition.

"Because the Essex Club of Newark, the Short Hills Club, the exclusive eating clubs of Princeton University" etc., are all seeking exemption. Let us find out from the Little Falls case and get a correct definition of this statute.

"Because this flood of tax exemption will result in an additional loss of more than \$20,000,000." Well, I don't know why he didn't put down \$40,000,000. As I said before, and I say it seriously, he will not find this exemption in all additional and new fraternal temples in the State of New Jersey because many of them were built during the heyday when everything was so lovely and they stopped in 1929. That I know is a fact.

"Because tax exemption can be justified only in the case of an organization performing a service essential to the public which the State would otherwise have to perform." We say amen to that. We are ready to go along with him on that. A condition has been created which is not our fault and which we would like, as I say, to help remedy.

"Because this repeal will not affect tax exemptions hitherto granted to educational, charitable and religious

institutions; such as, schools, hospitals" etc.; well, of course it won't. But I will explain that in a moment.

"Because the Legislature never intended to extend this privilege to the groups now claiming exemption by virtue of judicial decisions", and we say amen with him on that, and what we say is: let us get back, if it is possible to do it, where we were before; let us not wipe everything off the books, but let us be realistic about this thing; let us think of these many buildings which were constructed under our law, constructed at the time they were entitled to exemption. They were designed for specific and special purposes and those only are we appealing for.

Now, Mr. Ewing of New Brunswick says that since 1935 exemptions have gone up from five to twenty million dollars in New Brunswick if I quote him correctly. He says the college fraternities have one million dollars and that has been denied, being more like five hundred thousand dollars. Well, certainly the fraternities are not responsible for the other nineteen million five hundred thousand dollars. I would like to know -- you are entitled to know -- what those representations mean and whether they are sincere and whether they are earnest.

Now, we have a number of temples that never have sought exemption from taxation. I can think of three: one at Kearny, the Grand Masters Temple in Irvington and there is another one in Rutherford. They all rent out part of their property



and never have sought exemption. They are used for pecuniary profit and that is all there is to it. We do not wish the idea to be gotten out here that every temple, every building everywhere in the State of New Jersey that some fraternity happens to own is seeking tax exemption. That is far from the truth. My own temple was designed as a business building. It is used as such and the lodge room is auxiliary to it. I think that is true of the Mosque in Newark. There was one section which was used for lodge purposes, but I think the theater was rented out to movie people and the taxes must be paid. There can't be any question about that.

Now the course in the situation is this: The courts have said that we are charitable. They have said we have organized for the mental and moral improvement of men, women and children. The difficulty is over the section of the act which says that the title and the use must rest in the same place. That bars every charity from having a board of trustees hold any kind of property for them. Now, if you can remedy that, we are perfectly willing to stand by the old law. We want to stand by it. The 1926 amendment was brought into effect because they had changed the law in that respect and caught unawares a lot of these Masonic temples, large ones such as this one here in Trenton where eight lodges organized instead of one. Eight organized it. If we can get back to that feature and fix it that a holding company can

hold the title and that the title must not of necessity be in the charity itself, so long as the charity is maintained, and if it can be arranged that affiliated bodies shall not be deemed to be in illegal use, the situation is cured as far as we are concerned. We have enjoyed exemption on many of our buildings. The test has been tried; the courts have been found and we are rocking along pretty well until these fraternity cases got into the courts and these very liberal decisions come out, and then when Chairman Quinn of the Tax Board says, "I am letting down the flood gates; let the legislature take care of it", we find ourselves washed along with that tide with no way of helping ourselves unless indeed you see the reason for it all and come to the rescue.

Now it is a perfectly reasonable thing that we are asking for. I have no brief for the college fraternities. I don't quite understand those figures. If what Mr. Swing said is right, these college fraternities are worth \$35,000 apiece; and if what Mr. Johnson said is so -- his figures are about \$30,000 a piece --, they must be some fraternity houses. But I submit that Carl Erdman had the answer to that. New Brunswick won't be one bit better off if Rutgers College finds it necessary to take over those buildings because, as Carl Erdman well knows, the Princeton dormitories are exempt from taxation, and these will be rather than see them lost. That is not the answer. The answer is

for us to get back and try to remedy the situation which was brought about when we tried to stop foreign corporations from operating charities in the State of New Jersey and coming in here to collect money for those purposes. That is what brought it all about.

That is what made the legislature say the use and the title must rest in one and the same place. If you will remedy that, I think you have remedied it all.

Now then, just one word for the newspapers:

Carl Erdman has had rooms and rooms of this and he comes here and says this editor, that editor, the other editor, all are against this exemption. When the editors of the newspapers will advocate the payment of taxes for those great big newsstands which are on the corner of every street in this city, then I will think they are sincere. They have the greatest exemption of anybody we are talking about and I don't listen long to the editors unless they cure some of these things and I am serious about that. You can go around and find plenty of exemptions in one form and another, save, however, these buildings that were built under the law as you designed it, the legislature designed it, past legislatures designed it, organized, built in the light of what the State of New Jersey had declared its policy and now desired to be changed even further because of a situation which has developed. Now let's not kill everything by trying to cure the slight disease. There is no use cutting off our heads at all. Let us get at the thing in a real

and honest sort of a way and find some way for societies which are organized for the moral and mental improvement of men, women and children and for hospital and charitable purposes to hold property where two or more of them are in the property through a holding company so that it won't be debarred because the holding company is not organized for charity, and so that affiliated associations such as the ladies' auxiliaries, which all of these organizations have, can come in, and the courts will not declare that that is a non-conforming use and therefore bar the exemption.

I say to you seriously that life has to be made up of many parts. The fun we enjoy keeps us balanced for the work we have to do and you cannot expect any organisation anywhere to function only along the most serious lines and it is well known that all of the charities have meetings, entertainments, exhibits, anything you can think of -- I don't have to recite them all to you -- to attract attention to the thing that they are doing and to get aid and support, and that is the way we are sold on things. That is the way we are organised. That is the way every society functions. If you were to open up any kind of an organisation and put on your window that you are for the mental and moral improvement of men, women and children, see how many come to your door; but you say you are going to have a cake sale or you are going to have a secondhand sale or you are going to do something of that sort and you won't be able to contain all the

people. That is the way we get adherence. That is the way the churches do. That is the way every organization does, has to do. We demand those things as humans and you have to meet it in that way and when there is profit and when there is not profit is a very hard line to define. It seems to me the courts have handled it about as well as it can be handled. If all the receipts go back into the building and in no one's pocket and no effort is made to serve the public, then it is not for profit; but if you are selling over the counter to anybody who comes in and the proceeds go into the pocket of any individual, then you have an organization that is for profit.

Now, I would like to go along with Carl Erdman on many of the things he has. He is absolutely right in much that he says. He doesn't want to cut off our heads, not at all. He is not in a position to say so. He represents a tax exemption repeal committee. He has got up a lot of fireworks and he has to stand by his fireworks and I admire him for it; but you take him off in a corner and I will go with you and if we can't work out something that will fix this up, then we are not the boys we think we are. Thank you very much.

MR. FELLER:

Thank you, Mr. Vanderlip.

Gentlemen, that closes this public discussion on Assembly Bills 139 and 201. In behalf of Mr. Van Alstyne, Mr. Shershin, Mr. Keim and myself, I want to thank you for your interest

in coming down here today and your consideration during this hearing. It was very enlightening and very instructive to us as members of the Committee. As soon as the report is completed, we intend to go into this thing very thoroughly, although we ask that you have a little patience with us. We will have some report to submit. We will give it to the public. You will know what our action is as soon as we can get around to a definite conclusion. These two bills involve a very important public question, a very controversial one, and I will assure you that we will try to do our best to work out the solution. Thank you very much again for coming down.

Now, there will be a five-minute recess before we enter into the public discussion on Assembly Bill #18.

MR. FELLER: Gentlemen, we will follow the same procedure we did on the previous hearing. First, we will hear those who are to speak in favor of Assembly Bill 18 and then those who are to speak against it. Then each group will have one person to speak in rebuttal. Assemblyman McClave, I believe, will be the first speaker.

MR. MC CLAVE: Mr. Chairman, members of the Taxation Committee: I am the sponsor of Assembly Bill #18, which endeavors to clarify the act, the present act, concerning warehouses. The new act gives a specific definition as to what a warehouse is, what a building is, and I might say that there have been amendments that have been given to you, Mr. Chairman, amending Assembly Bill #18 and putting the repeal section, Section 2, in Section 1, and also inserting the words "or tank" after the word "building" as shown in the original bill, Section 1 on line 4.

There are several individuals who desire to represent different interests or municipalities and I refer to Mr. Parsonnet of the City of Newark; Mr. James Smith, Executive Secretary of the League of Municipalities; and Mr. Ralph Chandless, former Speaker of this House, who is representing the Township of Saddle River. I might say that the members of the Township Committee of Saddle River are here present today: Mr. Otto W. Pohle, Chairman of the Township Committee; Mr. Thomas C. Schepis, member of the Township Committee; and Mr. Joseph A. Evans, member of the

Township Committee. The bill was put in at the request of the Township of Saddle River. They have been taxing property and coal on a piece of land 56 acres in all and they have found that because of the way this act was interpreted, the original act, even though there was only a fence around the coal, it was construed to be exempt from taxation under the warehouse act. The bill is here for the express purpose of clarifying the definition of warehouse.

I will now introduce Mr. Parsonnet, representing the City of Newark.

MR. PARSONNET:

Mr. Chairman and members of the Committee:

I have been instructed by the Board of Commissioners of the City of Newark to express the opinion of the Board of Commissioners concerning this question of the taxation of warehouses. It may interest you to know that there is at present a test before the Court of Errors and Appeals to determine the constitutionality of the present act giving exemption to property located in warehouses. The City of Newark, although it did not appear except as a party in the Supreme Court, did instruct me to file a brief, and a brief was so filed, joining with the petitioners in that case, attacking the constitutionality of the present law. There seems to be no reason why warehouses or goods stored in warehouses should be any more exempt from taxation than any other personal property located in the State of New Jersey. The argument is made



that the reason for the exemption of such property from taxation is because such property is exempt from taxation in New York and Pennsylvania; but may I call the Committee's attention to the fact that all property in New York and Pennsylvania is equally exempt from taxation because there is no personal property tax in New York or Pennsylvania. I don't know what the taxation system of Pennsylvania is, but I know that warehouses are taxed in New York on the basis of an income tax, which we do not have, and as a matter of fact they undoubtedly pass on that tax as part of their storage warehouse costs. If they don't, then, of course, they are taking the loss themselves. However, to carry the argument made by the opponents of this measure, or the supporters of tax exemption, to its logical extreme - if warehouses will move out of New Jersey because of the competitive position of New York and Pennsylvania, then it is logical to assume that all business which involves personal property will also move out. People residing in the State of New Jersey who have personal property taxes would logically also remove to those states and we would soon be barren not only of warehouses, but of all personal property owners in the state.

I confess that this argument that business will move out of the state because of this, that or the other reason is more or less a red flag waved in front of the eyes of the legislators in order to confuse the legislators. We have heard a great

many threats that business would move out of the State of New Jersey, and we know that in comparison with its population, at the present time New Jersey is still the largest industrial state in the Union. I confess that this threat does not appeal to me. I do not believe the imposition of personal property taxes as opposed to income taxes in other states will have the effect of forcing the removal of people from this state.

However, if it should be the determination after final analysis of this Committee to recommend some limited exemption for property stored in warehouses, may I call this to the attention of the Committee: that as a result of the exemption granted to warehouses, mercantile companies instead of storing their goods which they have on hand for sale in their own stores or their own warehouses have on many occasions established what they called public warehouses, stored their goods in those public warehouses which are set aside for their own personal use, and thus effected a tremendous tax saving, far beyond what was originally intended by the framers of the present law. Department stores particularly have taken undue advantage of this warehouse exemption, so that the mass of their merchandise is not kept where it is subject to taxation, but kept in alleged, but not factual, public warehouses, which are operated for the sole purpose of the department store involved.

Now, if some exemption is to be granted, certainly a law should be written which would prevent the

exploitation of that law by others than bona fide public warehouses.

In respect to the present bill, the City of Newark is on record in support of the bill because it is a step toward the elimination and limitation of the exemption given to goods stored in public warehouses. At the present time, as Mr. McClave so ably said, all you need is a fence and you have a public warehouse where property can be stored completely exempt of taxation. That certainly was not the intention of the drafters of the present law and as in the argument we heard this morning and most of this afternoon, this discussion comes from an attempt by persons who are not intended to be exempt from taxation to come within the framework of the law so that they may be exempt. We ask the passage of this bill and also consideration by this Committee of some method either of eliminating or strictly limiting the present exemptions now allowed under the law.

MR. FELLER: Are you in a position, Mr. Parsonnet, to state in what order of importance taxation stands in determining the location of an established industry? I don't mean those companies that move around; but is taxation an important factor in determining the location of an established industry as far as your experience has been concerned in Newark?

MR. PARSONNET: I have been associated with the City of Newark officially and unofficially now for six or seven years. In that

period of time, to my personal knowledge, I know of only one company, only one large company, -- I don't know of any other -- which alleged it moved because of taxation, and we have grave doubts as to that company and the officials of the City of Newark are confident it moved because of other reasons.

MR. FELLER: Thank you, Mr. Parsonnet. Next speaker.

MR. MC CLAVE: Mr. Chairman, I now wish to present Mr. Smith, the Executive Secretary of the League of Municipalities.

MR. SMITH: The Legislative Committee of the League of Municipalities went on record as favoring the passage of this bill. The reason for their approval, aside from the specific case that brought about the drafting of the bill, was this: that the League is always in favor of any legislation that will tend to limit or restrict exemption of taxation of property. It was on that fundamental basis that we approved the bill and on that basis only. I feel, and I believe I represent the League in saying so, that if the purpose and if the objective of this bill could do what we thought it could do; that is, tend to restrict exemption, then we should be and are in favor of the passage of the bill.

MR. MC CLAVE: Mr. Chairman, unless there are some others who desire to speak in favor of the bill, Mr. Chandless would prefer to wait until such time as the opponents of the bill have talked, so he can answer rebuttal.

MR. FELLER: Of course, there will be rebuttal, Mr. McClave.

Is there any one here who has some new matter to add to that which has already been stated? Is that all?

MR. MC CLAVE: Yes.

MR. FELLER: Now we will hear from those opposed to Assembly Bill #18.

MR. MINARD: I desire the privilege of answering Mr. Chandler for the same reason that he desires to speak after I do. There is a statement that I prepared the day before yesterday of people who were to speak in opposition to the bill, but so many people have spoken to me yesterday and today, people that have come here whom I didn't know about, that I have had to add the names in pencil.

MR. FELLER: What is your name?

MR. MINARD: Duane H. Minard, Sr. I am the chairman of the committee of warehousemen, shippers and owners of stored goods, which has undertaken to assemble this material for the information of the Committee at this hearing. This matter is a distinctly separate idea from either of the two other bills that went before this morning. It is a matter of economic policy, so we don't want this to be regarded as just another tax exemption proposition, because it isn't that at all. I want to give you a little bit of the background.

Just like the banking business that came down from the Middle Ages, the storage warehouse business arose in

medieval times and was conducted by private individuals who were not regulated or subject to the public correction down to 1802 in England. The first act of Parliament was passed relating to storage warehouses and made them a public utility as they are in New Jersey and every state in the Union today under the laws and decisions of our courts. The reason for that was that just like a promissory note or a bank draft, which represented money in the private banker's till, so goods in storage represented money and was evidenced by a warehouse receipt which was sold and discounted at the bank and used as collateral for loans, etc. Now, when it came to the point where the business of the world had extended to such an extent that there were great losses on these warehouse receipts, defaults by the storage warehousemen, etc., then the public took hold of it and corrected it.

Now, from 1802 in England this has been a regulated business with a law governing the issuance, the value, the negotiation and the hypothecation of warehouse receipts.

Now, in 1848 in the United States the first step was taken to follow England and today we have uniform warehouse receipts laws in New Jersey and every other state in this Union and three of our insular possessions, so that we have under the jurisdiction of our flag forty-three governmental units that have the identically same warehouse receipts law. It governs the liability of the warehouseman. It protects the abuse or forging or misuse

of these warehouse receipts and it regulates the whole business thoroughly. Now, in addition to that, those that are in the coal storage business are under the regulation and license of the State Department of Health in this and in most of the other States. The warehouse business became a public utility, not like a street lighting company, but it was treated as a public utility and so called in the decision, just the same as the banking business, and went under the regulation of the government many years ago.

Alexander Hamilton introduced the first banking system in this country. Now, today, most of the commerce of the world is conducted on the basis of negotiable warehouse receipts, which are the evidence of ownership of property in storage, so that goods now in public storage, in commercial storage as we call it are in exactly the same position as money in the bank and money in the bank in this state is exempt and money in the warehouse is exempt in this state if it is a bona fide commercial warehouse.

Now, up to 1925, there were practically no commercial warehouses in the State of New Jersey. They flourished in New York and Pennsylvania where the goods in storage were tax free, not the warehouse or the plant, but the goods in storage, and in that year the legislature passed an act, Chapter 221 of the Laws of 1925, and the statement on the end of the bill read this way: "The object of this bill is to enable warehousemen in the State of New Jersey to compete successfully with warehousemen in

neighboring states where the property of the patrons of such foreign warehouses is relieved from taxation. Any loss of taxes in the State of New Jersey would be more than offset by the increase of taxable property of New Jersey warehousemen resulting from their growth if this handicap is removed." That was the basis on which the legislature passed the act. Now, since 1925 this act has gone on and been in application. No warehouses when the act was passed; today or at least the last report we had in 1941, there were 114 commercial warehouses in the State of New Jersey, and their assessed valuation is -- I tried to pick them out from the state tax reports and I couldn't get the exact figure because all the municipalities don't classify them in the same way, but they range surely \$75,000,000, and other items which are possibly warehouses will carry it up to \$100,000,000. Now, that has been accomplished by this law in the state.

This bill comes from Saddle River Township. In Saddle River Township there is a coal storage plant; that is, a plant for the storage of coal, and that coal is in interstate commerce under through bills of lading from the mines in Pennsylvania. It belongs to people who bought the coal from the mines and is shipped and is stored in Saddle River Township at a plant called Coalburgh. Now, that plant is assessed in Saddle River, I mean the land and the structures -- the land is assessed at \$20,000; the structures are assessed at \$140,000 and the taxes



which the owner of that plant pays to the Township of Saddle River are approximately ten percent of the entire tax revenue, state county and all revenue, collected by that borough, and that is a borough of 3,000 people. One individual, one taxpayer, is paying one-tenth of the whole tax burden of the municipality, state, county and municipal. I want to tell you that any municipality is fortunate that has one taxpayer that will pay ten percent of all of their public revenues. So this proposition is not tax free. Don't get that into your minds. And that coal plant would not be there if the goods were taxable because the cost of handling and storage of coal in that township is governed by railroad tariffs. This is anybody's coal that is stored there, anybody that wants to, but it is only storage in transit and those tariffs provide a rate for storage and handling of coal in and out and while there, and those tariffs have been filed and approved by the Interstate Commerce Commission and by the Public Utility Commission of the State of New Jersey. They are the official tariffs and this goods is stored in transit.

Now the definition in this bill; they have changed it to include tanks, but that doesn't help the situation at all for this reason: You have heard a good deal about that Rutgers fraternity case where they amended the exemption section to say that this shall not include college fraternities or words to that effect. The Court said, oh, well, you have created a

classification within a classification, you have vitiated the entire section because under the State constitution you can classify property for taxation or exemption, but all property in the same class must be taxed uniformly. Now, then, by amending this law to include a building or a tank fully walled and roofed -- of course that doesn't apply to a tank at all -- designed to house goods in storage -- now, in the war condition, a great many buildings that were never designed for storage warehouses are now storage warehouses holding this vast supply of war materials that is being accumulated for overseas, lend-lease and other purposes. We will take one plant. The Standard Milling Company built a flour processing plant in Jersey City. They gave it up a number of years ago and it was taken over and it is now operated as a storage warehouse for in-transit storage. It wasn't designed to be a warehouse, and you have a great many of them. You have limitations in here that will make classifications within classifications within classifications and so on, ad infinitum.

Now then, Saddle River naturally wants to get the revenue from that coal which they taxed for 1940 and 1941 and the Court set it aside on the ground it was exempt under this act as it now stands. But, bear in mind, without questioning the purpose of the Township of Saddle River and without questioning the purpose of the introducer of this bill -- he is an experienced legislator and his purpose is unquestioned and he is doing something

for a constituent who is very earnest and interested in this proposition -- they are looking at it from a very narrow point of view. The basis of the classification under that section is goods in a certain bailment relationship for hire, represented by negotiable warehouse receipts. Now, those warehouse receipts are not in New Jersey, all of them. A man in Oregon sends a carload or a trainload of apples. People in Nebraska send a carload of chickens. People from Mexico send up something else. People from Europe send things. It is put in storage in transit for ultimate delivery and distribution and they surrender the bill of lading, which in itself is a negotiable document covering the interstate commerce or shipment of the commodity. Then they exchange the bill of lading for a warehouse receipt and that goes back to the shipper. He may be in any state of the Union. He may be in any nation in the world. Now, the law says that you must note on the warehouse receipt all of the liens, all of the obligations, against those goods, so when a man buys it or negotiates it at the bank everybody knows what is due net on that transaction. I might issue a warehouse receipt on the 15th of September and on the 1st of October a tax lien is attached to the property. What does the man in Nebraska or Colorado or Ohio or in Europe know about that? What is he going to do about it? You can readily see that that is just like a bank draft. If the money in the bank was taxable on the first day of October, that bank draft made on the 15th of

September wouldn't be worth the paper it is written on and it is absolutely impossible to carry on the commerce of the world without either bank drafts or negotiable warehouse receipts or bills of lading, which are negotiable. The bill of lading is the alternative of the warehouse receipt. Nobody would know what that was worth. It would be totally unnegotiable anywhere in the world. That is the reason the uniform laws have been adopted and that is the classification. The relationship of bailor or bailee has nothing to do with where the goods are or who owns them or anything about it. Just like church property, it doesn't matter who owns it or where it is located. It is the status of the property. The bricks and the stones are just the same as those in the factory or the house next door. But it is a relationship that has to be maintained for the commerce of the world.

Let me give you a little illustration of the classes of storage that we have to deal with in New Jersey. We take the coal. That coal is in huge piles. It is said that there is only a fence about it. Well, it has derricks and cranes and extends seventy feet above the ground level. Those coal piles stand up there. The switch tracks of the railroad go in among them where the cars are loaded and unloaded. Now would you build a house with four walls and a roof over those coal piles? Barnum's tent wouldn't hold one of them. Barnum and Bailey's circus couldn't house one coal pile. Coal is stored elsewhere in transit

in the same way. On the 26th of March, 1943, at seven o'clock in the morning there were 1902 carloads of coal in storage in New Jersey besides the coal at Coalburgh. There is stored the same way metal castings and other metal products. Anything that is not injured by weather is stored in open storage. Now, it would be certainly an economic impossibility to house all of those things. Large quantities of vegetable oils, which industry is represented here today, are stored in transit. This act attempts to exempt them, so they might say, "very well, good-bye." But when you attempt to say that it must be in a building or in a tank, you are creating an illegal discrimination and the act is unconstitutional just the same as that other section was when they said this doesn't apply to fraternal organizations. There are other classes of open storage, storage on the piers, storage on land. You gentlemen going along the railroads have seen mountains of cases and packages and stuff that is all stored in transit. It may be there for a longer or shorter period according to when they have bottoms or ships to carry it away, according to when it can be delivered. Then there is lumber. Some of it is stored in the open and some under open sheds. Hay is stored the same way. An open shed would not conform to this definition. Then, of course, you have the storage in the warehouse building, the dry storage and refrigerated. But nearly every one of these storage companies that have the house storage also have open storage for

commodities that are not injured by weather or heat or cold or sun. Let me call your attention to this: -- I refer to March 26, 1943 -- I attempted to find out what the situation was on that score and on that morning at 7:00 a.m., in addition to this coal that I mentioned, -- here is a report of the General Managers' Association of New York made to the War Department and various governmental agencies -- there were that morning 5,151 cars of other kinds of freight in open storage on piers, on the ground. The minute you say that if it is in a house, it is exempt; if it is outdoors, it is taxable, you have created a discrimination which vitiates the whole section and the whole exemption is lost even for the tanks and for the storage warehouses themselves. That is the reason why the tank people and the house storage people are here in opposition to the bill. They are going to lose if this bill succeeds and there is no way to get rid of that. These other commodities are munitions. They are for war plants. They are for lend-lease and what not. They are in transit until they are delivered to the Federal government, put in ship bottoms, we will say they are going abroad, or until they are finally taken over. They are in the custody of the carrier as a warehouseman and it is in private custody. It doesn't belong to the government; therefore it is taxable if this thing goes through. Of course I don't pretend that if the government has title to it and owns it, then it is taxable, but most of this stuff is not in that condition.

The coal storage is there for a number of reasons. Within my personal experience of about forty years in this transportation business I have seen four or five times when that in-transit coal storage was the only thing that stood between no fuel and freezing to death and having heat in cases of labor disturbances at the mines, in railroad strikes, in winter conditions when coal couldn't be moved. By carrying it in and storing it in transit under these tariffs and under bills of lading in interstate commerce they are able to operate the mines all summer, all the year round, and they store the excess because anthracite coal is used only in the winter and if they couldn't do that, they never could mine enough for immediate consumption. You couldn't store it in the average plant and the average household doesn't have enough room, so that those are economic necessities.

I have handed up a list of people, as far as I know on our side, and I have attached to that two copies of a newspaper clipping. After the act of 1925 was passed, warehouses came into existence and they began to be built and this is a clipping announcing the completion of the first one. There was a great jubilation. People were invited down there and New Jersey was going to have some warehouses now. I will just read you a short paragraph here in connection with Mr. Parsonnet's remarks:

"The new seven-story building with its 67,000 square feet of floor space could not have been erected if the law taxing goods in warehouses were still in effect."

effect, company officials assert, as it would have been impossible to compete, on a large scale, with the tax-free warehouses of New York State and Pennsylvania.

"Newark city officials, a number of members of last year's Legislature who assisted in passing the warehouse-tax repealer, and leading merchants visited the warehouse yesterday."

They had a public celebration when the first warehouse came into New Jersey.

Now, with that background, of course, this bill was introduced because the Supreme Court sustained the exemption as to this coal at Saddle River. That case is before the Court of Errors and Appeals and this bill that is introduced is in anticipation of an adverse decision to them in that case. Of course, I don't think the Legislature ought to pass a bill for the purpose of reversing a decision of the Court of Errors and Appeals at least until after that decision has been rendered.

We will get to the first one, Mr. Cook, who is chairman of the New Jersey Mercantile Warehousemen's Association.

MR. COOK: Merchandise Warehousemen's Association.

MR. FELLER: Excuse me a moment. Mr. Van Alstyne has a question to ask.

MR. VAN ALSTYNE: Mr. Minard, I fail to follow about half your argument. Maybe I am not very intelligent.

MR. MINARD: Don't indict yourself first.

MR. VAN ALSTYNE: It seems to me that this is a bill which de-



defines what a warehouse is. It isn't a bill which proposes to tax goods in the warehouse. Now, I don't see why the warehousemen as such are against this bill. I didn't follow that part of the argument.

MR. MINARD: This bill creates a discrimination against goods that are not in warehouses and therefore vitiates the whole section. That is absolutely certain. No lawyer familiar with constitutional law --

MR. VAN ALSTYNE: The point is it makes it unconstitutional. It is on the point of constitutionality.

MR. MINARD: That is right.

MR. VAN ALSTYNE: Any other point?

MR. MINARD: The point of public policy.

MR. VAN ALSTYNE: This bill doesn't propose to tax goods in warehouses.

MR. MINARD: I know, but it proposes to tax goods not in warehouse, and that is under warehouse receipts the same as the other, and that curtails the operation of the uniform warehouse receipts law by making it apply to only a limited quantity, by the way, the smaller quantities of goods in storage. You see, there are more goods in quantity in outdoor storage than there are in indoor storage, and these are just simple illustrations: You take 5100 earloads of freight in these terminals. That includes all the railroads entering New York Harbor. The only one in that list that does not store, has its in-transit storage, in

New Jersey is the New Haven and they have only 40 cars, and I deducted the 40 cars to get the 5100. All that material is under one of two things. It is either under storage warehouse receipts, negotiable, which are hypothecated in banks so the industry can get its money for its goods, or it is through bills of lading, which are also negotiable in the banks, and so on. These people couldn't do business -- for instance, take the farmers here in New Jersey. Fifteen thousand or so farmers in New Jersey produce seasonal crops. The only way they can get their money immediately, unless they sell on a glutted market when everybody's potatoes are ripe or everybody's apples are ready to be marketed, is to send it to a public warehouse. It happens that material is in a storage warehouse, and except for the fact that the act would be unconstitutional if you passed this bill, it would be exempt from taxation. But what is their hay? You passed a bill here the other day to exempt growing crops. Would you say that if the crops are growing in the field, they shall be taxed, but if they are growing in a greenhouse, they shall not be taxed; if grain or hay is growing or stacked in the field, it shall be taxed, but if it is in a barn, it shall not be taxed; the cattle in the field should be taxed, but not those in the barn? Those simple illustrations are intended to show you just what this illegal discrimination amounts to.

MR. VAN ALSTYNE: Thank you, sir.

MR. CHANDLER: Mr. Chairman, may I, through you, ask my friend,

Mr. Minard, a question that might simplify things. Mr. Minard, isn't it correct that the present statute reads, "all personal property stored in a warehouse," etc?

MR. MINARD: Yes.

MR. CHANDLESS: Now, would you be in a position to give us the definition that we might agree upon as to warehouse?

MR. MINARD: Yes, I will give you one right away. Wait a minute. I will give you a definition. I have it in the same book you are looking at, Senator, so you can find it if you want to if you will bear with me a second. What page is that?

MR. CHANDLESS: The reference to the statute is page 8 of my brief.

MR. MINARD: I will tell you what a definition of a warehouse is. The American Encyclopedia of Law, Corpus Juris, Bouvier's Law Dictionary, every decision that I know of of every court in any state or in the Federal courts of the United States says a warehouse is a place adapted for the storage of goods - a place. The only course of decisions that requires a building as a warehouse is in the Federal statutes relating to the storage of farm products such as grain and so on, which cannot be stored outdoors. The open definition in the authorities that I have cited and in the cases that I have read without a single exception -- and the decision of our own New Jersey Supreme Court -- says it doesn't have to be in an enclosed building, but a place adapted for the storage

of goods. Senator Chandless is referring to a brief before the Court of Errors and Appeals in these cases, and in that brief the cases are collected, all of them, from many, many States, showing that a building of any particular type is not a criterion of the relationship, the bailment relationship, of a storage warehouseman to the person owning or storing the goods. Does that answer your question, Senator?

MR. CHANDLESS: Perhaps if you answer one more question, you might give me a better understanding of the subject. Wouldn't your definition, as you now propose it, be contrary to the statement which you read to us as having been the statement on the original bill when it was passed in this House?

MR. MINARD: No.

MR. CHANDLESS: In other words, you refer in that statement to additional--

MR. MINARD: Assessment.

MR. CHANDLESS: --additional assessment. Now, when you speak of place in the definition you have given us, I suppose you mean all outdoors. That wouldn't involve any additional assessment, any such definition as you have given to the Committee.

MR. MINARD: We will take your particular situation. Saddle River Township got one-tenth of its total ratables from the land and improvements, \$140,000 for improvements, for this storage which is outdoors. You wouldn't have that if you hadn't that

storage plant.

MR. CHANDLESS: We are speaking about a general law which would be applicable to everyone.

MR. MINARD: There is no kind of storage that doesn't require cranes or some kind of apparatus for taking care of it. I don't know of any kind. Take these open piers. They are equipped with tracks and cranes and a lot of machinery and equipment. I don't know of any kind of storage that doesn't require some kind of machinery or structure or equipment to accommodate the use of the place to the purposes of the storage, so it does actually provide the ratables which would not be there otherwise.

MR. CHANDLESS: You do agree, then, there should be some definition which would involve some property subject to taxation?

MR. MINARD: Yes, call it a place where goods are stored by a commercial warehouse.

MR. CHANDLESS: Also, it must involve some property which would be a substitute for the exemption granted under the act.

MR. MINARD: We have been getting along now for eighteen years under that law, and everybody knows what it means and you don't need any definition that isn't there already. The definition is specific and explicit. You don't need any definition.

MR. CHANDLESS: Mr. Minard, I don't want to be personal but I would like to ask one other question. How long have you represented this concern?

MR. MINARD: What has that got to do with it?

MR. CHANDLESS: You paid taxes up to 1940.

MR. MINARD: No, we didn't. Before 1940 this was not

operated as a public storage and it was available only to a limited number of shippers. In 1939, in February, the railroad company published tariffs that made this an open public utility available to every shipper of coal, no matter who he was, that wanted to use it, and from that time on it has been operated by Independent Warehouse, Inc., a corporation which by certificate was incorporated to operate a commercial storage business and it is authorized to operate that business at Coalburgh by a certificate of the Secretary of State of the State of New Jersey. It was a private storage plant not open to the public at the time the Senator is talking about.

MR. FELLER:

Mr. Cook --

MR. COOK:

Mr. Chairman and gentlemen: In behalf of the companies I represent, and as Chairman of the Board of Directors of the New Jersey Merchandise Warehousemen's Association, Inc., of the State of New Jersey, I wish it to be made known to you gentlemen and made a part of the record that the membership of this association comprising the majority of the merchandise warehousemen through the State of New Jersey opposes the passing of Assembly Bill No. 18 for the following reasons:

1. If Assembly Bill No. 18 is adopted, it probably will invalidate R. S. 54:4-8.20, which provides that goods stored in a warehouse operated by a person engaged in the business of storing goods for hire shall be exempt from taxation.

2. Since taxation is not had in neighboring states, storers will place their material in warehouses in Pennsylvania, New York, etc. This would adversely affect real estate taxes, employment of labor, transportation, local trucking, banking, service to the consumer and the public generally. In fact I am inclined to believe that it may create increased expense on merchandise from a consumer standpoint.

3. Warehouses have no other specific use than for warehousing since they are specially designed for such, unless considerable expense is entailed.

4. We like many others in New Jersey, as

warehousemen, established our business on the following years with the belief and reliance upon Statute R. S. 54:4-3.20, which permits goods to be stored in commercial public warehouses tax exempt:

Lehigh Warehouse and Transportation Company, Inc.

Newark, New Jersey 1926

Elizabeth, New Jersey 1935

Lackawanna Warehouse Company, Inc.

Jersey City, New Jersey 1940

5. It should be kept in mind that warehouses located in the State of New Jersey have had a material effect in helping the manufacturers throughout the State of New Jersey.

6. New Jersey has some of the largest and best managed warehouses in Metropolitan New York, not excluding the United States.

7. If this bill is passed, it will not only affect warehousing, but importation and exportation as well as other industries concerned.

8. It should be remembered that a great deal of freight is handled through the ports of Newark, Jersey City and Camden, New Jersey.

9. The accomplishments of the warehousemen in New Jersey during the past eighteen years will be destroyed.

10. Due to the fact that warehousing is an essential part of the war effort, the crippling of the warehouse



industry in New Jersey no doubt will have a serious effect.

11. Since rationing has been deemed necessary, a quick delivery of goods is needed, and such will not be as readily available, especially to the people of New Jersey.

I would like to leave one thought in closing, that a large percentage of the merchandise that is warehoused in the State of New Jersey is not consumed here. We must depend on in-transit business and if that is destroyed, the warehouse industry is going to be destroyed. One of the previous speakers, I believe Mr. Parsonnet, was not fearful of warehousemen going out of business and moving to other states or storers moving to other states. He is grossly misinformed and so are others.

In closing I beg you gentlemen to give this matter every consideration and do not pass this bill as presented.

Respectfully submitted in behalf of the New Jersey Merchandise Warehousemen's Association.

Mr. Chairman, I also have several letters that were directed to my attention by warehousemen throughout the State that I would like to offer as evidence; also as to their protest of this particular bill.

MR. FELLER: Will you submit to a question by Mr. Van Alstyne?

MR. COOK: I will be glad to answer.

MR. VAN ALSTYNE: Again I say the same thing. I think I must be a very stupid person because I fail to follow most of your

argument. This bill does not put back on the taxable lists property in warehouses. It does not, definitely, does it?

MR. COOK: I would rather pass that question to my counsel here, Mr. John Yauch. I feel it is a legal question. Maybe he can answer it better than I.

MR. VANALSTYNE: This bill simply defines the word "building". It does not tax goods in a warehouse. You stated that because of the bill of 1925, certain buildings were erected in 1926. You specifically used the word "buildings" and this bill does not tax goods in these buildings.

MR. COOK: We understand that very clearly.

MR. VANALSTYNE: I don't understand the argument.

MR. YAUCH: May I try to clear it up?

MR. VANALSTYNE: You talk about being at the mercy of New York and Pennsylvania. This bill does not tax goods in warehouses.

MR. YAUCH: You are absolutely right. Why are we merchandise warehousemen who have the goods of our customers stored in buildings interested in this bill? It is a proper question. After all, why did we make this trip to Trenton and wait here all day? I will tell you why. Mr. Minard pointed out the fact but may I make it clear and brief, I hope. Under the laws of the State of New Jersey, under our constitution, property shall be assessed for taxes under general laws and by uniform rules, according to true value. If goods are exempt from taxation because they are under a roof and other goods of exactly the same character, the

same type of goods, are not exempt from taxation because they are not under a reef, that is not a uniform rule and I say, and I believe I am not prejudiced, I believe any lawyer that would examine this question, this exemption, will render the 1925 statute under which goods stored in our warehouses are now exempt unconstitutional.

MR. VANALSTYNE: This is the point I am getting at; There were eleven reasons against the bill that Mr. Cook read, but it really boils down to one reason again it, and one reason only - it is unconstitutional.

MR. YAUGH: Yes, it is in effect, because we say this bill will render the whole law unconstitutional. In effect, it is a repealer. That is the effect of it as far as we warehousemen are concerned. But you are right; boiling it down, our real objection to this particular bill, Assembly Bill No. 18, is that we claim it is going to render unconstitutional the 1925 statute.

MR. VANALSTYNE: The competition is from New York and Pennsylvania, isn't it?

MR. YAUGH: Right.

MR. VANALSTYNE: What do their laws say with respect to the goods out of doors?

MR. YAUGH: The competition is not alone from New York and Pennsylvania. The competition is from all States in the Union. I mean goods that find their way into a warehouse are in transit.

MR. VANALSTYNE: Except that, what is the New York and Pennsylvania law on this subject?

MR. YAUGH: Pennsylvania does not tax goods in a public warehouse.

MR. VANALSTYNE: They define that as what?

MR. YAUGH: I am sorry I can't tell you, but I know the law of Pennsylvania does not impose taxes on goods stored in a public warehouse.

MR. VANALSTYNE: Neither does this bill.

MR. YAUGH: But if this bill has the effect I claim it has; namely, of rendering the 1925 act unconstitutional, then our goods will come under the same classification and be subject to taxes the same as any personal property. Do I make myself clear on that?

MR. VANALSTYNE: I am sorry - I am not a lawyer. I don't know whether or not it is constitutional.

MR. MINARD: Mr. Vanalstyme, the Pennsylvania law does not tax the goods whether they are stored outside or inside, and neither does the New York law, so that it makes no discrimination between indoor and outdoor storage. I would like to, out of turn, call Mr. Jackson because there are reasons he would like to be released - Mr. Jackson of the New Jersey State Department of Agriculture. He has a statement to make or hand up to the Committee.

MR. JACKSON:

Mr. Chairman and members of the Committee: I am here at the invitation of Mr. Minard to give a little background on the importance of storage to the agricultural interests here in New Jersey. I am not sure I appreciate all of the implications of this bill, and I will leave that to the lawyers. I just want to submit for your information a report on a survey which was made by the Department of Agriculture at the request of the Defense Council to determine the extent of the food storage facilities here in New Jersey. This was made about two years ago when the Defense Council was seeking information on the food requirements and the food needs, food storage facilities, in case we were faced with some very serious emergency. This report covers the food requirements and production in New Jersey, and I think we all recognize that New Jersey is what we call a deficiency State. In other words, we are dependent on foods being shipped in and held in storage for our consumers. Part number two is the food storage facilities in New Jersey, a complete survey of both the dry and refrigerated storage facilities, and supplement to part two, "Refrigerated warehouse space for food products in northern and southern sections in New Jersey." From this survey, it appears that we have in New Jersey approximately 29,900,000 cubic feet of gross space in refrigerated storage, and about 15,000,000 cubic feet in dry storage. From an agricultural standpoint, these facilities - not all of them, of course, - are very essential to New Jersey farmers. Most crops

are harvested over a period of a week or perhaps six weeks, in some instances, and naturally they cannot all be placed on the market at one time and it is decidedly to the farmers' advantage, as well as to the advantage of the consumers, to have these facilities here in the State. For instance, we store considerable quantities of apples, which are picked in October, and they are moving now and they will move until the first of June out of our storage. The same is true of potatoes and, for short periods of time, celery and onions and other products which are held in storage. In recent years, there has been a considerable development of the frozen foods industry in this State, and, of course, we have to have facilities for them. In addition, New Jersey farmers in many respects are really consumers of agricultural products that are produced in other areas. For instance, we fed during the year, in this State, around 600,000 of milled feeds. A good part of these are brought in from other areas. Especially during a period such as the present one, it is very necessary that we build up a backlog of supplies to maintain our dairy and our poultry industry.

As to the location of these facilities, our farmers prefer to make use of storage houses which are as close as possible to the consuming markets. Naturally, they want to take advantage of the market demands in those areas and be able to promptly meet them from their storage homes. In most

instances the farmer retains title to these goods during the period they are in storage and, as has already been mentioned, he often has to negotiate a loan. Few farmers have sufficient volume of produce to maintain their own individually owned storage facilities. In a number of cases - there are, I imagine, fifteen to twenty farm enterprises in the State that are large enough to operate their own facilities. Generally speaking, the majority of our farmers depend on the commercial warehouses.

In conclusion, I would say that agricultural products are quite dependent on convenient storage facilities and especially under present conditions, when we are living, sort of, on a hand-to-mouth basis, with rationing facing us with many products. Without the negotiable warehouse receipts which the farmers of many crops are able to obtain and to sell and to discount, they would be compelled to sell their products on short notice or perhaps on a glutted market at depreciation prices. If there is any further information that the Department of Agriculture can furnish to the Committee, to the proponents or opponents of this bill, we will be very glad to do so.

MR. MINARD: Will you hand that statement up for the files of the Committee?

MR. JACKSON: Yes, sir.

MR. MINARD: Mr. Frank O'Hara, Association of Refrigerated Storage Warehouses; Mr. Albert Megerley of the tank storage

business, and Mr. Peter Ferretti of the tank storage business would be included in the words of this law but for the fact that they would lose their exemption by virtue of its unconstitutionality on the point Mr. VanAlstyne made. If they have statements here they can submit them, and if they have any amplification to make, but I think that can be briefed quite a little, and we get down to the open storage fellows.

MR. FELLER: May I suggest, Mr. Minard, that you ask your speakers if what they have to say is repetitious, and if it is, they can just let us know how they stand.

MR. MINARD: I tried to get them to all prepare written statements so they wouldn't have to even comment on them except in a few instances. Are those gentlemen I mentioned here?

MR. O'HARA: I am from Montclair, New Jersey, and am vice president of the Union Terminal Cold Storage Company, Inc., at the mouth of the Holland Tunnel, Jersey City. I am also national president of the National Association of Refrigerated Storage Warehouses. I have a statement here I will submit. It is really a repetition of what Mr. Cook and Mr. Minard have already stated.

MR. FELLER: Thank you.

MR. MINARD: Is Mr. Megerley here?

MR. MERRAN: Mr. Megerley was to read a statement. I understand the bill before the Committee is the amended bill, which



includes tanks, is that right?

MR. FELLER: Yes.

MR. MEEHAN: Therefore, it won't be necessary to read his statement. We are glad that that amendment has been put in the bill

MR. MINARD: Mr. Mogerley left his statement here. I will just file it.

MR. MEEHAN: There is no necessity to file it since the amended bill is before the Committee, but I might say this: I spoke with some of the lawyers who have evidently gone very deeply into this constitutional question, and they feel the bill presently before the Committee is unconstitutional. I am not prepared to give any opinion of that, myself, at the moment, but as long as the bill as amended is in our favor, I suppose we should sit down and rest on that and leave the legal situation to the courts and counsel fees for appearing there.

MR. FERRETTI: I represent the Coastal Oil Company of Port Newark. The bill, as amended now, in some measure corrects the situation to which I was objecting; that is, we have included the word "tank", but I think, except for the question of unconstitutionality, it doesn't go far enough insofar as we are concerned. We are storing petroleum in Port Newark, and in these times we have been designated as a gateway by the Supplies and Distribution Committee, which is a subcommittee of the Petroleum Coordinator's office. That means that anybody and everybody can store petroleum products in our terminal. The condition this

summer and the condition this fall will be such that every available tank, vessel or reservoir will be necessary to store oil for people who are using our plant as a warehouse, so that my recommendation, as I say, except for the question of unconstitutionality, was that the bill should be amended to read "tank, reservoir or other receptacle," particularly so now when much of the petroleum that is coming through is coming in barrels and being stored enpiers and in vacant areas. How long that condition will continue, nobody knows.

MR. MINARD:

Mr. Burger--

MR. BURGER:

Mr. Chairman, Members of the Committee: I have a

brief statement to submit for the New Jersey State Chamber of Commerce in opposition to this bill. The New Jersey State Chamber of Commerce desires to make known its opposition to Assembly Bill No. 18, which would have the effect of removing the present tax exemption from goods stored in certain types of public warehousing facilities in New Jersey. The Chamber believes that the enactment of this bill would pave the way to court action which might result in the removal of the tax exempt status from personal property stored in public warehouses generally in New Jersey. If this were to happen, it would threaten the destruction of the entire warehousing industry in our State.

I want to say that the New Jersey State Chamber of Commerce was one of the leaders in the effort back in 1928, along

with the Newark Chamber of Commerce and certain other business and civic groups, to secure the passage of the 1925 act, believing that it was good for the industrial development of the State.

It is often said that transportation constitutes the arteries of industry. It can be said with equal truth that public warehousing constitutes industry's digestive system, for warehouses provide industry with the means of assimilating vast quantities of raw materials and distributing the finished product in efficient, orderly fashion. New Jersey, being an industrial State, considers its public warehousing facilities as essential to the development of its resources as are power plants and water systems.

The importance of public warehousing to the economic life of our State was recognized by the New Jersey Legislature in 1925, when it passed the act which exempted from local property taxation goods stored in public warehouses. This wise legislative action led to an immediate, steady expansion of the State's warehouse facilities, which in turn had a marked favorable influence upon New Jersey's industrial development. The number of manufacturing establishments in this State has grown until today it exceeds the ten thousand mark. These New Jersey manufacturing establishments pay taxes for the support of local and State governments in New Jersey aggregating in excess

of eighty million dollars; that is not assessments, assessed valuations; that is taxes. It does not tax the imagination of any informed person to gauge the extent to which public warehousing has helped our State to attain this industrial growth and to achieve top rank among the forty-eight States in industrial war production.

New Jersey's public warehousing enterprises constitute an important industry in themselves. Numbering over one hundred, they employ normally more than 1,000 people. They pay local property taxes on more than \$75,000,000 worth of assessed real estate valuations, a very large part of which have come into the State since 1925, the year in which the warehouse tax exemption act was passed.

But the real importance of public warehousing to our State must be weighed in relation to the vital role it plays in our State's industrial development. It would be interesting to estimate the many millions of dollars worth of taxable wealth brought into the State by new industries and expanding old industries which depend upon public warehousing in Jersey City, Hoboken, Newark, Bayonne, Camden, Trenton, Elizabeth, Paterson, and other industrial centers of New Jersey.

The Federal Government has put hundreds of millions of dollars into the construction of war plants in many States of the Union. When the war is over and our factories are

converted once more to peacetime production, the other States where these war plants are located will engage in bitter competition with New Jersey for a share of our going industrial enterprises. Therefore, we cannot afford to weaken the capacity of our State to service industry and to promote its development. If, as our counsel advises, Assembly Bill No. 18 endangers the 1925 exemption act and therefore endangers public warehousing in New Jersey, then it is a bad bill and should be rejected by this Legislature.

MR. FELLNER: De you have anyone else, Mr. Minard?

MR. MINARD: Mr. Wollmuth--

MR. WOLLMUTH: Will you be good enough to excuse a personal reference? It is only because I want to give to the Committee the background, of my knowledge, in the City of Newark with respect to the problem of taxation. A question was directed to that matter by one of the gentlemen of the Committee a little while ago and it was answered by a speaker not present at the moment, and I am sorry he isn't, because I have to address myself to that point. It is not rebuttal; it is answering a Committee question. The question was, as I recall it, whether or not the matter of taxation had a bearing upon the movement of business out of the State. Actually, from twenty-three years of experience in the City of Newark, of close observation with respect to matters affecting business and the commerce and trade of the community

in general, I can state to this Committee that in 1934, due to the capricious action of our Director of Revenue and Finance at that time by an impractical application of the law - he was within the law, I must state, but nevertheless in the arbitrary exercise of that law-he drove millions and millions and millions of dollars worth of business out of the City of Newark. As a result of that action there, some of the same effect was felt in other counties of the State, notably Camden County and Hudson County, and only recently in Hudson County we have had a fine example of the sensitivity of business to changing policies with respect to taxation. In the City of Newark it created a revolution, and we haven't recovered from it today. Business did move out of the City of Newark, at that time represented by millions and millions of dollars.

Another point that I hesitate to mention here but I think it is due to the Committee and it certainly is due to those whom I have the authority to represent here today; namely, those who are affected by this pending legislation at this hearing, is this: I know of no official action on the part of the governing body of the City of Newark that would cause anybody to assume to come down here and speak in opposition, or even for, this bill. The point is we have not had an opportunity, because of the general war situation, to contact the people at City Hall, and there is one gentleman at City Hall, the

Commissioner of the Department of Public Works, who certainly, I am informed, has not concurred or indicated his concurrence to what was stated here today by Mr. Parsonett, who represented, as he stated, the City of Newark. I venture to state to this Committee that I will be able to have filed with your Committee, before you reach your determination on this very important measure affecting the considerations that enter into the commerce and trade of the State so seriously, a resolution from the City Commission of the City of Newark that it is opposed to this bill at hearing here today, and I make that statement not lightly. I have, in addition, a written statement, which I will not read because in about fifty percent of its context it is repetition of what has been said. The Committee has been very gracious with its time and I certainly don't want to impose upon it, and with your permission I would like to file this statement with the secretary.

MR. MINARD: Mr. English, representing the lumber people, whose storage facilities would not conform with this bill.

MR. ENGLISH: Mr. Chairman and gentlemen: Before I go into the question of lumber, may I just say a word about the constitutional question which seems to trouble some of the members of the Committee. Here is the point: The statute which is now on the books - forget this bill for the moment - says that personal property stored with a warehouseman who is engaged in the business

of storing goods for hire shall be exempt from taxation. We have had two pronouncements from our Supreme Court on the character of warehouse which can store goods for hire and those goods be exempt from taxation. One is the McClelland case, a lumber case I personally argued before the Supreme Court so I am familiar with it, and the other a case recently before the courts, brought by Mr. Schwartz of Newark to test the same statute, in which I also participated as counsel. In the Haljeam(?) McClelland case one of the points made was that some of the goods were stored in the open. The court said it doesn't make any difference as to a warehouse from a legal standpoint whether the goods are stored in a building or in the open. The essence of a warehouse is that there is a change of possession; you turn your goods over to a warehouseman, they are in his possession, he gives you a warehouse receipt and under the law, the legal conception of warehouse receipt, that is the title to the goods and you present your receipt to the warehouseman or you endorse it for transfer to you, Mr. Chairman, or anybody else, and the goods go where you direct in accordance with your warehouse receipt. The essence of a warehouse is not that goods are stored in a building or stored behind a fence; the essence of it is that it is turned over to a warehouseman, the possession changes from you to him. You take his warehouse receipt that has all these legal things Mr. Minard spoke about, and it doesn't make any difference how or



where the goods are stored.

This new bill changes that. It says that personal property which is stored in a building, or as I understand it has been amended now, and in tanks shall be exempt from taxation. Of course, it necessarily follows that goods which are not stored in a building or in tanks are subject to tax. You see, that splits warehouse consigned goods into two categories, goods which are exempt from taxation and goods which are taxable. That makes a classification which I feel quite confident in saying, as a member of the Bar, would not be sustained by the court. It is an unconstitutional classification.

Here is the difficulty: The next section of this proposed statute, this bill, says that the original statute, which exempted goods stored with a warehouseman who was engaged in the business of storing goods for hire, is repealed, so that if this bill becomes a law and it is attacked as it is bound to be attacked in the court and the court says, as I feel quite confident it would say, that this particular section one, which makes this distinction between goods tax free in buildings and goods taxable in the open, stored with the same warehouseman, is unconstitutional, then you have a good section which would not be ruled out and the original statute would be repealed.

That is the difficulty; that is what all these gentlemen are groping for to get into the minds of you members

of this Committee. If this statute, which makes the distinction between some part of goods stored in a warehouse being taxed and some part not taxed, is declared unconstitutional, as we all firmly believe it will be, then your repealer becomes effective and we have no exemption of any kind whatever for goods stored in New Jersey. That means the warehouse business will go out of business.

MR. VANALSTYNE: Without meaning to be facetious, I would say I am not the one who is worried about the unconstitutionality. I would think the warehousemen were.

MR. ENGLISH: Of course they are worried. There are millions of dollars invested in warehouses of this State that all grew up since the law was passed in 1926. Why wouldn't they be worried? And if this repealer is going to be effective because the first part of the statute is unconstitutional, then the whole business is wiped out and the millions of dollars in investment in New Jersey is gone and a useful organization which has served the public now for eighteen years in storing goods and making them available, all kinds of goods, will be wiped off. Why? Because New York, which doesn't tax, is just over the River, Philadelphia, which doesn't tax, is just over the River from Camden, and the goods of course would go to one State or the other or be detained on cars outside the State and New Jersey would necessarily suffer from it.

I thought a little while ago, when Senator Chandless was cross examining Mr. Minard, that this was going to degenerate into a contest between those two opponents of the Bar because they are opposed to each other in this Saddle River case. Apparently, they may carry that into this discussion. Please don't be confused about that. There is a good deal more in the bill than taxing or not taxing coal in Saddle River. You gentlemen must look at this from the viewpoint of the interest of the public of the State of New Jersey and the effect it will have on business in New Jersey with respect to warehousemen and on the welfare of the citizens of New Jersey who do business with warehousemen and on the general subject of taxation in New Jersey, in addition.

I am here, as Mr. Minard said, in behalf of the lumber business. I represent warehouses which, among other things, store lumber. As Mr. VanAlstyne suggested, they may be worried. I think they have a right to be worried. Lumber is a kind of commodity, speaking now of lumber generally, which cannot be stored indoors. You can store ceiling lathe, ceiling goods, kiln-dry lumber, as they call it. These narrow things can be put indoors, but only about twenty percent of the lumber stored in warehouses is that type. The bulk of lumber, and particularly the lumber now being used because of the war effort, is what they call heavy lumber, such as piling, which are logs 120 feet long;

heavy timber, which are great beams 12 x 12, 14 x 14, 16 x 16, 18 x 18. These enormous trees which come from the West Coast are a class of lumber and heavy planks, long boards, are a class of lumber which has to be stored outdoors. You cannot store them indoors because you have to have them along railroad sidings where you have cranes to lift them on and off cars. The cost of handling, if they had to be handled by hand, would be almost prohibitive, so you have to store your lumber outdoors. It is the common custom, as any warehouseman will tell you, to store lumber, particularly this heavy lumber, out of doors.

The government has taken over a lot of warehouses. Just as a matter of practical application, there aren't enough warehouses to store lumber indoors if it was practical to store lumber indoors, because the government in this war effort has taken over so many of them. The government has designated two particular concerns as repositories for lumber, some of which the government may own or sell, most of which is owned by private concerns that store it there because it is being accumulated by the government.

If you gentlemen are not informed, you would be surprised at the enormous amount of heavy lumber being taken by the government in connection with the war effort. For example, Atlantic Terminals, Inc., which I represent among other interests, had on hand, owned by private individuals, stored in their

warehouse, to be taken over by the federal government - the government is practically the only buyer of heavy lumber because you know you can't do any private construction - forty million feet of lumber. Do you know what that means? If you added it end to end it would mean over 7,500 miles straight ahead. That will give you some conception of the enormous amount of lumber that is being consumed by the government.

Down in the Port of Newark, Tidewater Terminal has millions of feet of lumber which is awaiting shipment abroad. Down in Camden there is the A. G. Dutton Lumber Company which leases from the South Jersey Commission, I think they call it, or whatever it is called, created by statute, the Port Commission at Camden, which has millions of feet of lumber on storage, ready to be taken over by the government when the government wants it.

That is a very valuable thing in the war effort, as well as for the public generally in peacetime, because the lumber there is available. Most of the heavy lumber, practically all of it, comes from the Pacific Coast. The government doesn't buy a big tree on the Pacific Coast and then saw it up and ship it. It goes, in a hurry, to the company that has this stuff on storage and has these big logs and piling and all these other things, and buys them, and the government is practically the only buyer of this heavy timber at the present time.

Now, if these owners of this heavy timber had to bring that on here and pay taxes on it, it just wouldn't come here; it would go to New York from the northern end of the State; it would stop in Philadelphia at the southern end of the State, or it would be detained on cars outside the State, to the detriment of the purchaser, the government, because it would have to wait until it was brought up to be available to be used either in this country or shipped abroad, as the case may be.

So, there is a good deal more to this bill than a mere contest in some little community in Bergen County over a coal dump. It affects the State in every respect, up and down, these 114 warehouses, or whatever they are, in reference to the various commodities which they store and from the standpoint which I am now addressing you gentlemen, from the standpoint of the lumber men who are dealing in such immense quantities of lumber demanded by the government, in respect to the goods they turn over to the government, and so, because I am perfectly confident as a lawyer that this statute, if it is enacted, is going to be declared unconstitutional with the result that the repealer will become effective and goods stored in a warehouse as a matter of law will be wiped out, it presents to my mind, and I hope to your minds as a responsible committee to advise the Legislature on this, what I think is a very serious situation from the standpoint of the public and the State of New Jersey and,

in the present emergency, from the standpoint of the success of the war effort with respect to the effort of the government to bring this war to a close. Therefore, I hope you gentlemen will give it the very careful consideration which I have no doubt you will give it.

I have a statement which I will file with the Committee.

MR. MINARD: Mr. Chairman, there are some gentlemen here who are not on my list and who have expressed a desire to say a word about this bill. One is John J. Cummings of the Paterson Chamber of Commerce, and one is John J. Hickey of the New Jersey Manufacturers Association.

MR. CUMMINGS: The Paterson Chamber of Commerce wishes to express their opposition to Assembly Bill No. 18 for the various reasons expressed here.

MR. FELLER: Mr. Hickey--

MR. HICKEY: My name is Michael J. - I am sorry it isn't John, because he is a very distinguished practitioner on interstate commerce law, etc. My name is Michael J. Hickey and I am the assistant secretary of the Manufacturers Association of New Jersey. Our Association, with its 5,000 members, has a very broad and fundamental interest in any legislation that would have the effect of destroying the harmony and smooth operations of the economic and commercial system of the state.

MR. VANALSTYNE: We didn't get the name of the organization you represent.

MR. HICKEY: The Manufacturers Association of New Jersey. We look at the bill in its broad aspect and say that arising out of an effort on the part of one municipality to secure some additional taxation on one piece of property, the penalty for that may easily prove to be the upsetting of the whole commercial operation system of the State and the loss of millions of dollars of material economic interest to the State by reason of the disturbance, not only in connection with the State of the law, which I am not here to discuss, but with the practical operation of business that has been going on now for a number of years. I don't think the Legislature ought to give serious consideration, particularly at this time, to anything that would bring about even that result in part or in whole. I desire to join with the other opponents of this bill, on behalf of our Association, in expressing the hope that this bill, even as amended, will not pass.

MR. MINARD: Mr. Bain--

MR. BAIN: I am Robert J. Bain of Jersey City.

MR. FELLER: Whom do you represent?

MR. BAIN: Independent Warehouses, Inc. That is a corporation engaged in the public warehousing business in several of the Eastern Seaboard States. It is the company that conducts the



coal storage business at the plant in Saddle River Township, and the company is opposed to Senate Bill No. 18. Mr. John F. McCormack, the president of the company, was present here this morning but unfortunately had to leave at the noon recess to keep an engagement in New York, but I have his prepared statement. Most of it, I think, is in repetition of what has been said and I will only waste time by repeating it now. Therefore, I shall ask leave to file the statement with the Chairman.

MR. MINARD: I would like to have Mr. Lowe speak at this time. He has a peculiar situation of field storage which is clearly outside the definition of this bill.

MR. LOWE: I represent the Tidewater Field Warehouses in New York City, operating in the twelve northeastern States.

MR. VANALSTYNE: Do you operate in New Jersey?

MR. LOWE: Yes, we are operating in New Jersey quite a number of field warehouses.

It might be well for me to take the first few moments to explain to the Committee, as no one else has done during the interview here, that there are two types of warehouses. One is general storage, which you have been discussing ever since about four o'clock, and the other is the one that is directly interested in this particular bill, and the only one that could be interested in the bill, is the field warehouse, which I represent. The reason for that is this: The principal reason for the general

warehouseman being in business is the storage of goods. He operates his building or a dock or some other parcel of land for the storage of public goods. He must operate under the Uniform Warehouse Receipts Act if he operates lawfully in the State of New Jersey. That is true of the field warehouseman with the exception that the field warehouseman's principal object in being in this business is not particularly storage. Our business deals with the collateralization of inventoried goods, generally, for bank loan purposes, and that is where this bill would hit us below the belt, because it will wreck the entire program of hundreds of manufacturers, wholesalers, distributors throughout the State of New Jersey, who are warehousing inventory goods on their own premises by reason of field warehousing. I might add there, as a sort of interjection, that field warehouse companies that are competent to operate in New Jersey can, by their very nature, go into any manufacturing plant, any wholesale dealer's plant, or take over a parcel of ground adjoining the plant or a railroad or a dock facility, for the purpose of storing any commodity that the manufacturer, the wholesaler, the distributor wishes to store, and we can lease that space, set up a factual public warehouse there, and we are in all effects the same as a general warehouseman, so far as the law is concerned.

The laws of the States, the Federal Government, and the United States Supreme Court even, have validated field

warehousing to the point where, if this bill should be enacted into law, it would not only be classed as class and discriminatory legislation against field warehousing, but I am certain that it would have the result of causing the entire warehousing act, the exemption act, to be thrown out in the first court action that was brought up, which would be a very detrimental thing to the State of New Jersey and to hundreds of manufacturers, wholesalers and distributors who are using the services of field warehouses.

You had quite a discussion a few moments ago as to what constitutes a warehouse. While that discussion was going on, I jotted down what I remembered of a court decision a few years ago, not too long ago, by the United States Circuit Court of Appeals, and that decision was approximately to this effect: A warehouse, as defined by the State and federal courts, does not necessarily mean a building with four walls but rather it can be any place or space, inside or outside, that is definitely and lawfully under the complete and notorious possession and operation, through ownership or lease, of any person, company, partnership or corporation engaged in the business of storing goods for profit. I think if that interpretation was put in your act, there would be no reason for the act being put through the Legislature at all, and that is the only interpretation that the Assembly can rightfully place on this bill for the simple

reason that you are defining something that does not lend itself to four walls - a tank, a silo, or anything of that sort. You can't define a public warehouse as anything that is encased within four walls. I don't care whether it is round or square or longitudinal or where it is or what it is. It can be a warehouse if it is so properly posted and the warehouseman is in notorious possession of it and he has a legal right to be there. They can't stop him from operating a warehouse.

I believe I might give you a comparison. Take, for instance, one of our companion companies our associated companies operates at Newark Tidewater Terminal at Newark, one of the largest waterfront terminals in the country. Let us suppose that the United States Steel Corporation sent a great quantity of steel into that plant for storage. Three-fourths of that steel could go under the sheds. One-fourth of it, by reason of its size, weight and general condition that it could be stored in the open, is stored out in the yard, like thirty million feet of lumber is stored there in the same place. Would it be possible to tax the steel that is in the yard and not tax the steel that is in the shed? I don't believe so. I don't believe you could possibly do it. I don't think any court in the land would hold this steel outside the buildings was liable for taxation and this steel under the roof was exempt from taxation. I can't see it. And the same reason would apply in general warehousing and field

warehousing.

Most of the field warehousing is done under a roof within four walls or a cylinder such as a bunker, silo, a tank, or whatnot, but there is a good percentage of our warehouse contracts that call for the storage of coal, particularly right now. Might I point out to you what an injustice it would be to hundreds of your little coal dealers throughout New Jersey, who have employed a field warehouseman to set up a warehouse at their little retail yards? They can handle at most two, three or four thousand tons of coal, and the only reason that they would hire us to come in there and take possession of that yard and issue warehouse receipts to a bank which would finance the coal is simply because they cannot buy a sufficient amount of coal to protect the interest of that community during the winter unless their bank assists them in financing. Their bank will not, and cannot, assist them unless it can get security.

Therefore, the mere fact that a field warehouseman is operating in two, three, or two or three hundred small coal dealers' yards or small oil distributors, for instance-- we are operating there for the benefit of the communities. Do you think it is lawfully right that we, as field warehousemen, and our customers, whom we are storing for, should be subjected to a tax when millions of dollars worth of goods are in public warehouses and not subject to any tax? That might let Bamberger and Company of Newark put

a million dollars worth of goods in the general warehouses of Newark but it might make one of my little coal dealers in Keyport with two thousand tons of coal pay a tax because he can't send his coal into a public warehouse.

I just feel that the field warehousemen and their clients are really the only injured parties in this bill and we have had everything but field warehousemen here today, but there is one other thought that I want to leave with the Committee if I may. I think most of it has been said except the fact that this would work an undue hardship upon these manufacturers, wholesalers and distributors throughout the State who are in need of additional current working capital to bolster their own resources at the present time and must employ field warehouses to give their bank the collateral they need for loans to these businesses, and, gentlemen, that is a serious problem today. There are hundreds, thousands of businesses throughout the United States today that are in such a condition that financial help is really the only thing that will save them from here on through. Inventories have dropped to a great degree and they will continue to drop, and I don't believe that there is a single, solitary customer of any field warehouseman in the State of New Jersey, to my knowledge at least, who has deliberately put goods in warehouses for the sole purpose of evading this tax that would be on goods that were not in the public warehouse. I

don't believe there is a single one - I know there isn't, to my knowledge, and if any customer approached my company and attempted to put goods in for that sole purpose, he certainly would not operate the job for him.

Thank you very kindly.

MR. MINARD:

Mr. Laird--

MR. LAIRD:

Mr. Chairman and Gentlemen: The statement which I am about to give you is made on behalf of the Associated Railroads of New Jersey, and that is an organization which comprises all of the steam railroads operating in this State. The Association is opposed to Assembly Bill No. 18 for the reason that, in its opinion, this bill would in effect amend Section 54:4-3.20 of the Revised Statutes, which now exempts from taxation personal property stored in public warehouses, in such a way as to confine the exemption from taxation to property stored with a public warehouseman in an enclosed building and subject to taxation property stored with a public warehouseman in the open. It thus makes personal property stored with a public warehouseman in this State taxable or non-taxable, depending on whether it is held in storage in a fully enclosed building on the one hand, or in a partially enclosed building or in the open, on the other. In either case, its status under the law of bailment would be the same. This distinction, we believe, would create an indefensible classification that might invalidate on constitutional grounds the

entire statute, including the exemption of property stored in a warehouse building. Such a result, of course, might have a devastating effect upon the public warehouse business in this State, and the railroads would suffer serious loss of traffic therefrom through the diversion of warehoused goods to warehouses outside the State of New Jersey.

But the railroads would be more directly and more seriously affected by the proposed bill in that it might be construed to subject to taxation freight stored by the railroads themselves on their own property in the open. The quantity of freight so stored is large in normal peace times. It has assumed much greater volume under war conditions. For example, freight of various kinds is stored on the ground at destination terminals of the railroad companies awaiting delivery to consignees. Export freight is stored on open piers awaiting transfer to vessels. Freight is stored in the open at storage points along the rights-of-way in this State under transit tariffs which permit such freight to be shipped into the transit point on rates to that point, stored there for various periods of time, and then shipped out to final destination on through rates from original point of shipment to final destination. It has long been the practice of the railroads of New Jersey to store coal in transit. Large quantities of wartime freight are now being stored in this manner. All of it is in course of transportation



under tariffs filed with the Interstate Commerce Commission. It has only a temporary location in the State of New Jersey, like freight actually moving in railroad transportation through the State. To subject freight while so stored within the State to local taxation would: (a) place a burden upon interstate commerce which would be of very doubtful constitutionality; (b) impose a burden upon wartime traffic that would be inimical to the public interest in the prosecution of the war; and (c) have a natural tendency to divert traffic, which is now accorded such storage, to railroads in a position to offer similar storage outside the State of New Jersey free from any threat of local taxation. Because of this possibility of diversion of freight, it is doubtful, on the other hand, that any substantial amount of taxes could be collected by the municipalities under the proposed law.

For these reasons the New Jersey railroads wish respectfully to record their opposition to the enactment of the proposed bill.

MR. MINARD: Mr. William L. Tighe--

MR. FELLER: Mr. Minard, is this repetition or new matter?

MR. MINARD: I merely want Mr. Tighe to enter his objection.

He represents one of the railroad companies that is in reorganization in the federal courts and another one, but I don't think he will make a speech.

MR. FELLER: If he has any new matter, we want to hear it, but if it is repetition--

MR. TIGHE: In behalf of the Erie Railroad Company and the Susquehanna Railroad Company, I want to state that those companies would like to go on record as opposing the passage of this bill.

MR. MINARD: That is all we have. There are some other gentlemen present but I don't think any of them particularly want to make a statement because what has been said covers the field pretty well.

MR. FELLER: If, after we are through, they care to record themselves with the secretary, they may do so.

MR. MINARD: I think they are all on the list I handed up, the pencil list attached to the typewritten list.

MR. FELLER: Senator, are you speaking in rebuttal?

MR. CHANDLESS: Mr. Chairman and gentlemen; I realize the hour is late and I don't want to take too much time, but I think there are certain things which I should pay some attention to. Frankly, I can understand the position of Mr. Minard. I can realize his attitude with respect to this bill, but I am at a loss to understand how there can be any objection forthcoming from a legitimate warehouseman, particularly from the attorney of a legitimate warehouseman, because they are familiar with the decisions of the court in respect to this particular question.

I wanted to correct Mr. English. I understood him to read the act as being all personal property stored with a warehouse. The act reads, all personal property stored in a warehouse shall be exempt from taxation.

MR. ENGLISH:           that is incorrect.

MR. CHANDLESS:        I understood you to read it "with".

MR. ENGLISH:        You misunderstood me.

MR. CHANDLESS:       We agree, then, it is "in". That is very important from the point of view of any law because the present law deals with an exemption of taxation for property in a certain place. If these gentlemen had expounded the same rule of law before the Court of Errors and Appeals on the warehouse statute that they expound to you here today about unconstitutionality, they would have been conceding my argument before the Court of Errors and Appeals, but they argued a different thing there. They said that those words were general. They said that there didn't have to be an exemption of all personal property in New Jersey; that there only had to be an exemption of personal property in a warehouse, and that was a general statement of law. Then the Supreme Court did hold that that statute, those words, were good.

That is all this statute does. It was originally our thought, when we proposed this bill, to undertake to repeal the exemption in its entirety because, frankly, I can't see how any private businessman, whether he is a warehouseman or what he may be, has a right to get a gift of public funds at the public

expense, and that is what this tax exemption is. This isn't like your fraternity bills which were argued here. These fraternity bills - the argument was that those fraternities rendered a public service, that there was some public benefit forthcoming from the fraternity, but certainly a warehouse is a private business.

I think the last gentleman who spoke told how, by the use of this warehouse system, he was making a profit; that no longer did the coal man have to pay taxes on his coal but he now went in this device of a warehouse and thereby he evaded taxes. My ideas of tax exemptions - I think they are sustained by the decisions of the courts although they may not have been followed by the Supreme Court in this particular case - I differ with the Supreme Court in their decision, but this Legislature has no right to grant a tax exemption except for one of two reasons: first, it either must be because there is some public benefit forthcoming from the one who gets the exemption, such as charities, etc., or, secondly, it must be a method of taxation, it must be part of your tax plan. In other words, you couldn't go out and give to lawyers - maybe you can - the Court of Errors and Appeals may say you can, but no matter how hard up the lawyers may be today, you couldn't pass a law that would exempt, for instance, my office from taxation or my personal property from taxation because the law hasn't yet reached the point where it

says the lawyers are rendering any public service. They say that we are in a private business for private profit, but the Legislature could set up a method of taxation whereby it takes a particular class of business and establishes different rules for taxation. However, if it doesn't establish any taxation, then it is violating a constitutional provision that you can't make a gift of public funds.

That is the law that is involved in this case. We have not come here today to quarrel with the legitimate warehouseman; we have no quarrel with him whatsoever. It may be theoretically I believe he is not entitled to an exemption but if the Legislature sees fit, in its wisdom, to give an exemption to what seems to me to be a private business, I have no quarrel with that and Saddle River Township has no quarrel with it, but we have a quarrel with the use of the present law as a subterfuge to evade taxation. I say that because this coal concern was in business in that municipality for forty years, paid these taxes for forty years, and then suddenly, in 1940, somebody devised the scheme of setting up a warehouse and one employe was brought in, he was the warehouse. He testified to that in depositions in this case. Although his employers, who were from Pennsylvania, said that they had gone into business on a certain day, he testified he thought he had been running the warehouse for years. He had worked for the old coal company that was just now set up

as the warehouse. If your statute in the State of New Jersey is so full of holes that by the employment of the simple device of not even paying five cents more in the way of wages, because the same man is there who was there before checking the coal as it came in and checking it when it went out, but by changing his title as an employe of a coal company to an employe of a warehouse company they can take out of the taxpayers of little Saddle River township \$12,000 a year, then I certainly say that that statute is the means and method of making a gift of public funds to a private corporation.

There is nothing to worry about so far as the constitutionality of this statute goes. If personal property stored in a warehouse is general legislation, personal property stored in a building is general legislation. There can't be any question about that. I have all the respect in the world for these attorneys who come here but there can't be any question about that. In other words, we go so far one way, so far the other way. Their argument the last time we argued this question was just the reverse of what it is today, but I submit to you that this statute is just as general as the statute which was held constitutional by the Supreme Court.

You members of the Legislature know how many times you have passed acts defining words in a statute. Yet my learned legal friends here say there is some sort of new constitutional

theory in New Jersey that the Legislature hasn't the power to define a word it uses. If you use the word "building", you certainly have a right to say what you mean by the word "building". Of course, if you narrowed the meaning so much that it was plain to the Justices of the Court of Errors and Appeals that you were trying to make it special and trying to take care of only a certain situation, then you might be in a different position. That is why I asked Mr. Minard the question as to how he would define a building. Maybe we could get at a common ground as to the definition of a building. We are satisfied with what my friend, Mr. Yaugh, says a warehouse is. Warehouse is a very broad--

MR. YAUGH: You asked him how to define a warehouse, not a building.

MR. CHANDLER: Warehouse, with the idea of getting a definition for a building. There are some accepted authorities as to meaning of words and one of the most accepted authorities there is is "Words and Phrases". In their first series they define a warehouse as a building in which goods are stored or deposited. In the second series they say a warehouse is a house in which wares or goods are kept, a storehouse. In their third series they say in common parlance a warehouse is a house used for storing goods, wares and merchandise, whether for the owner or for someone else, and whether the same be a public or private.

warehouse. That last definition is very important. Certainly, when you use a definition in your bill, in this Assembly Bill No. 18, that comes within the definition of the word by such accepted authorities as this, it is preposterous for anyone to try to say it is special.

There was something said about warehouse receipts and the use of warehouse receipts. There is nothing in the present law now, under which they get their exemptions, about goods stored in a warehouse for which a warehouse receipt has been issued. Those words are not in there. If they contend they want protection for that, they should come here with a bill for protection for warehouse receipts, not for personal property stored in a warehouse. In other words, I think their argument concedes the weakness of the present law and a need for change.

There has been a lot said about goods stored along railroad sidings, I think, and on railroad decks. Well, I didn't know there had been any recent decision which permitted the taxation of that property. That property has always been exempt from taxation, not because of this statute but because of another statute. For the information of the Committee, I would like to read what seems to be the final decision of the Court of Errors and Appeals as to whether property is taxable or whether it isn't; I mean from the point of view of goods in transit. Goods in transit are exempt from taxation under the federal law



and under the Interstate Commerce Commission provision and under the constitutional provision of the United States Constitution. In the case of Lehigh and Wilkes Barre Coal Company vs. Borough of Junction, 75 Law, 922 - I am sure Mr. Minard is familiar with that case - the Court of Errors and Appeals said, "If deposited at Tidewater or at Junction," - that is a town, "or anywhere else in the State to await orders for future delivery, for the purpose of future disposition and sale, for the purpose of keeping a stock on hand to supply customers when mines are closed, or to accumulate a supply to meet demands which the mines are not competent to fulfill at normal rates of production, we think the coal deposited has become intermingled with the mass of general property within the State and subject to taxation." In other words, property is not subject to taxation unless it has been commingled or intermingled or mingled with the other property of the State. These are the words of the court. In other words, until that property comes to rest and has a definite final resting place within the State of New Jersey and is no longer in transit, it is then, and then only would it become, subject to taxation. But that isn't because of this bill or the old law; it is another proposition of law.

I don't know whether there are any other questions which really warrant my saying anything. Something was said about there being a decision of the Court of Errors and Appeals

pending on this question. There are other questions involved in that case beside the question that is in this statute, but certainly the taxpayers of Saddle River Township are not obligated, or should not be obligated, to spend thousands and thousands of dollars in litigation with these gentlemen. Rather, they should have the right to come to the members of the Legislature and say to the members of the Legislature, "Define what you mean by warehouse." When the Supreme Court considered the question of warehouse, and you may read their opinion, they didn't say that all property for which a warehouse receipt had been issued had to be given a tax exemption. There was some doubt in their minds as to whether or not they would go so far as to say that property stored in the open lots was in a warehouse, but they finally, not because of this constitutional theory they seem to be worried about, not because of general or special legislation to include all property, said, "Well, because there is a fence there and they have a little machinery there and the Legislature hasn't defined what they mean by warehouse and we don't know what they mean, therefore we have got to give them the benefit of the doubt and call it a warehouse."

That is the situation so far as the law goes, but there is one thing that I want to call to the attention of the Committee. I happen to have been a member of this House when this bill was passed in 1925, and when that bill was enacted by

the Legislature the representation was made to us then that if we gave this property the exemption from taxation, there would be buildings, not open lots but buildings, which would take the place of the loss of ratables on the property. If that wasn't what the sponsors or drafters of that bill intended at that time, and it was the warehousemen who intended it, then they certainly secured the passage of the bill under a misrepresentation. The statement itself indicates the fact that they represented to the Legislature the fact that there would be tangible buildings which would be subject to taxation, so that I feel there is nothing that the legitimate warehouseman has to worry about, so far as this bill goes, but anyone who attempts to use it as a subterfuge and won't even put a building up would be denied the exemption. That is all this bill means.

If your Committee can't think of any other definition of "building" which at least will not involve all outdoors, we would be perfectly willing that that be done. All we want to do is do away with the evasion which has resulted from the use of a law which the Legislature intended to embrace a building, so that people today are not paying taxes directly or indirectly. It is bad enough that the legitimate warehouseman gets the tax exemption, but where they use the device-- I might say the State Board of Tax Appeals has said that it is absolutely legal if the Legislature passes a law for you to use that law

even though it is a subterfuge for evading taxes. We say it is your duty to so amend that law that there no longer will be any chance of subterfuge and at least the people will get some taxes back in the form of a tax on the building.

MR. FELLER: Senator, would you submit to a question?

MR. CHANDLER: Certainly.

MR. FELLER: We are told that one of the theories behind property taxation is that the owner thereof pays for protection. Is it possible for us to know whether or not the police and fire protection furnished by a municipality to the owner of property that is stored in a building is the same as that furnished to the owner of property stored out of a building? Is it more or less in one case than in the other, or would you say it is the same?

MR. CHANDLER: I would say it would be more on the property stored out of a building. In other words, certainly property stored in a warehouse would be less subject to theft than property stored out. I don't know whether there is any theory which permits a division of the subject on the basis of the cost to the municipality unless it be under your statute which allows licensing. Then the element of cost might go into it on the question of reasonableness. In my opinion, it is simply a question as to how much of a grant the Legislature feels it wants to make to these people. Sure, they make an investment. Many and many a man makes an investment in business, but he has to pay

taxes. If you want to make an outright grant of exemption to them without their making any contribution back at all in the form of even a tax on the building, then I think, in justice to the people of New Jersey, it should be so stated in the law so that there can't be any more litigation. This litigation costs little towns thousands and thousands of dollars, and I think one of the provinces and one of the duties of the Legislature is to draft its legislation so that it doesn't cost the people a whole lot of money trying to find out what it means. I realize that when a bill comes in the Legislature and one person puts a word in and another one takes a word out almost anything can happen, but certainly it is the duty of the Legislature, and I think you realize and appreciate it is your duty, to make that legislation in such a form that litigation can be averted. Talking about litigation, this bill was drawn so that the warehouse people wouldn't take it to court. They wouldn't take it to court because if they took it to court they would lose their present exemption, so there won't be any contest from the warehouse people. That bill is in such a form that there wouldn't be any further litigation on the subject of warehouses, and they know and appreciate the fact because if they were successful in beating the definition, they would lose their whole exemption. They appreciate that fact.

MR. MINARD:

But the outside storage fellows are the ones who

are going to take it to court.

I am not going to answer Senator Chandless for this reason: The argument he made, he made to the Supreme Court and they didn't accept it. I am very much surprised, and they would be, too, at his interpretation of their definition or their reason for sustaining this exemption. They said that any place where the relationship of bailment for hire existed was a warehouse under the act.

Several times today, not only on this bill but there, the question has arisen as to for what purposes the Legislature may exempt property. Let me give you the consensus of Jurisprudence on this subject in a half-dozen lines from 61 Corpus Juris, 383: "The purpose of granting exemptions from taxation is ordinarily found in motives of public policy, such as in the encouragement of manufacturers and other industries, the construction of railroads, the reforestation of land, etc." so that this idea of quid pro quo, of doing something that would have to be done at public expense as being the only basis of exemption. That is not the fundamental basis; that is an artificial dictum of the court in the decision that was read from this morning, and the court decided the case on an entirely different ground and not that ground at all.

We are very much obligated to the Committee for their patience and good nature, and if we have been a little

repetitious, you know how everybody feels they want to speak their piece or say something of the sort. We are satisfied this bill would destroy the warehouse exemption as well as the others, and Senator Chandless admitted that when he said the warehouseman wouldn't attack this law because if it did, it would destroy their exemption. He admitted our contention right there. If Mr. Chandless doesn't understand certain other things, all he has to do is read a brief I sent to him a short time ago, in *Schwartz vs. Essex County Tax Board*, and he will have all his questions answered.

I thank you.

MR. FELLER: That concludes the hearing. I want to thank you very much, in behalf of the Committee and myself, for waiting all day. You certainly have been very patient and very gracious. We will follow the same procedure we followed at the end of the other hearing. We will have a report prepared and the Committee will give it very thorough study and you will read about our findings. Have a little patience with us.

MR. CHANDLESS: On behalf of the Township Committee of Saddle River Township, I want to express our thanks for your consideration, and they trust sincerely you will define the word "warehouse".

MR. FELLER: Thank you.

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