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Writ of Certiorari.

NEW JERSEY SUPREME COURT.

New Jersey, ss.:

The State of New Jersey to The
(SEAL) Mayor and Aldermen of Jersey City,
and the Director of Revenue and Fi- 10
nance of Jersey City. We being willing for cer-
tain reasons to be certified of a certain assess-
ment of taxes upon property of Samuel W. Gar-
rison and Irma B. Garrison, No. 91 Kensington
Avenue, in the City of Jersey City, do hereby
command you that you send under your seal to
our Justices of our Supreme Court, of Judica-
ture, at Trenton, on the 7th day of November,
instant, the said assessment of taxes, together 20
with all things touching and concerning the
same as fully and entirely as they remain before
you, together with this writ that we may further
cause to be done what of right we shall see fit to
be done.

Witness, William S. Gummere, Esq., Chief
Justice of our Supreme Court, at Trenton, this
fourth day of November, 1918.

ENOCH L. JOHNSON,
Clerk. 30

HARK! LANE,
FRANK J. HIGGINS,
Attorneys for Prosecutors.

Approved as to form,

JOHN BENTLEY,
Atty. Mayor and Aldermen of Jersey City,
and

JAMES F. GANNON, Jr.
Director.

40

Return.

To the Chief Justice and the Associated Justices
of the Supreme Court of the State of New
Jersey.

10 In pursuance of the command of the annexed
Writ of Certiorari, the Mayor and Aldermen of
Jersey City and the Director of Revenue and
Finance of Jersey City, for return thereto, here-
by certify and send the assessments of taxes
upon property of Samuel W. Garrison and Irma
B. Garrison, No. 91 Kensington Avenue, in the
City of Jersey City, in said writ specified, with
all the things touching and concerning the same—
all as in the schedule annexed, as within we are
commanded.

Dated November 7th, 1918.

20 THE MAYOR AND ALDERMEN OF JERSEY CITY,.
By Daniel O'Regan,
Acting City Clerk.

(Seal.)

NOTICE OF ASSESSMENTS FROM COUNTY BOARD OF
TAXATION, FILED WITH DIRECTOR OF REVENUE
AND FINANCE.

October 11, 1918.

Hon. James F. Gannon,
Director of Revenue and Finance.
30 Jersey City, N. J.

Dear sir:

Your revised valuations as filed with this
Board are:

Real Estate	\$244,202,362
Personal	54,644,375
Total	<u>\$298,846,737</u>

Return.

The value of 2nd Class Railroad
property as returned by State
Board is 59,468,390

Grand Total \$358,315,127

The amounts to be raised in your Taxing Dis-
trict are as follows:

For State Road purposes	\$358,315.13	10
For State School purposes	848,546.39	
For County purposes	1,731,604.32	
For Municipal purposes	3,256,952.39	
	\$6,195,418.23	

The Tax Rates for the several purposes are:

State Road purposes—0.001 or \$1.00 per \$1,000.	
State School purposes—0.0023615675 or \$2.37 per \$1,000.	20
County purposes—0.00483262968 or \$4.84 per \$1,000.	
Municipal purposes—0.00908963128 or \$9.09 per \$1,000.	

By Order of the
HUDSON COUNTY BOARD OF TAXATION,
Joseph P. McLean,
Secretary.

Bank Stock Tax, \$30,433.74. 30

REFERENCE IN TAX ASSESSMENT ROLLS REFERRING
TO PROPERTY No. 91 KENSINGTON AVENUE,
JERSEY CITY.

Block 1818 as assessed for 1918

Owner—Samuel W. Garrison, et ux.

Lot—D.

Street number—91 Kensington Avenue.

Description of building—2½ story, frame.

Area—25 x 136.33, etc. 40

Return.

Value of land	\$2900.00
Value of improvement	\$2400.00
Total value	\$5300.00
(Rate \$17.30)	

RESOLUTION OF BOARD OF SCHOOL ESTIMATE.

- 10** Resolution of Board of School Estimate, duly passed providing for the Budget for the year July 1st, 1918, to June 30th, 1919, for the use of Public Schools in the District of Jersey City, inclusive of the amount apportioned by the County Superintendent of Schools—total \$1,331,390.34.

CERTIFICATE TO HUDSON COUNTY BOARD OF TAXATION.

- 20** Hudson County Board of Taxation,
Court House, Jersey City, N. J.

This is to certify that the following is a true copy of an ordinance passed by the Board of Commissioners of Jersey City at the Meeting held August 6, 1918.

*An Ordinance Relating to Taxes for Fiscal Year
Ending the Thirty-first Day of December,
Nineteen Hundred and Eighteen.*

- 30** The Board of Commissioners of Jersey City do ordain that there shall be assessed, raised by taxation, and collected for the fiscal year, ending December 31st, 1918, the sum of Three million two hundred and eighty-seven thousand, three hundred and eighty-six and 13/100ths dollars (\$3,287,386.13) for the purpose of meeting the appropriations set forth in the following statement of resources and appropriations for the fiscal year ending December 31st, 1918:

*Return.**Resources.*

Surplus Revenue Appropriated....	None
Miscellaneous Revenue	None
Amount to be raised by taxes	\$3,287,386.13

Total Resources\$3,287,386.13

Budget Appropriations as Fixed in the Adopted Budget. **10**

Appropriations	\$1,955,995.79
Local Schools	1,331,390.34

Total Appropriations\$3,287,386.13

This ordinance shall take effect immediately.
Passed August 6, 1918.

MICHAEL I. FAGEN,
JAMES F. GANNON, Jr., **20**
A. HARRY MOORE,
CHARLES F. X. O'BRIEN,
FRANK HAGUE,
Commissioners.

DANIEL O'REGAN,
Acting City Clerk.

In Testimony Whereof, I have hereunto set my
hand the Corporate seal of "The
(SEAL) Mayor and Aldermen of Jersey City," **30**
this tenth day of August, one thou-
sand nine hundred and eighteen.

DANIEL O'REGAN,
Acting City Clerk.

Reasons.**NEW JERSEY SUPREME COURT.**

10	SAMUEL W. GARRISON and IRMA B. GARRISON,	<i>Prosecutors,</i>	On Certiorari.
	<i>v.</i>		
20	THE MAYOR AND ALDERMEN OF JERSEY CITY, <i>et als</i>,	<i>Respondents.</i>	

The Prosecutors write down the following Reasons why the assessment of taxes should be set aside:

- 20 1. The Board of Commissioners of Jersey City had no power or authority to pass and adopt the Tax Ordinance and Budget brought up by the writ, on which the tax assessment is based.
2. The Board of Chosen Freeholders of the County of Hudson had no power or authority to pass the Tax Ordinance and Budget adopted for the period ending December 31st, 1918.
3. The said assessment of taxes is wholly illegal and without authority under any statute or law.
- 30 4. The said assessment of taxes, tax ordinances and budgets are illegal and unauthorized by Chapters 236, 238 or 242 of the Laws of 1918, or Chapter 197 of Laws of 1917, or any other statute.
5. The Tax Ordinance and Budgets for the fiscal year ending December 1st, 1918, had been adopted by the Board of Commissioners of Jer-

Reasons.

Jersey City and the Board of Chosen Freeholders of Hudson County and the tax rate and assessment duly fixed by the Hudson County Board of Taxation, and the taxes duly assessed, levied and collectible therefor on or before December 20th, 1917.

6. That under Chapters 236 and 238 of the Laws of 1918, the appropriations purported to be fixed in aforesaid Tax Ordinances and Budgets of the City of Jersey City and the County of Hudson could only be included in or as a supplement to the next annual budget, to wit: the budget to be adopted for the year January 1st, 1919 to December 31st, 1919. 10

7. The amount to be raised for taxation for local purposes other than schools, in the case of municipalities and for county purposes, in case of counties provided in said Tax Ordinances and Budgets are such as to cause the rate in the tax levy for such local or county purposes to exceed the rate for like purposes in the next preceding tax levy. 20

8. There is included in said Tax Ordinance and Budget adopted by the Board of City Commissioners of Jersey City, and the Board of Chosen Freeholders of Hudson County, and the tax assessment therefor, innumerable illegal items which could only be included in the next annual tax budget and which are not within the scope of the provisions of the act relating to an emergency or supplemental budget for one month, to wit: for the month of December, in the case of Jersey City and the County of Hudson; to be passed in connection with and included in the next Budget and Tax Levy, to wit: the Budget and Tax Levy for the year January 1st, 1919, to December 31st, 1919. 30
40

Reasons.

9. The State School and State Road Tax could not be assessed so as to become a lien in December, 1918, on property of prosecutor in Jersey City, but should be included in the tax levy in Jersey City for the year commencing January 1st, 1919.

10. The tax assessment amounts to double taxation which is prohibited by law and unconstitutional.

11. The tax ordinances and budgets of the City of Jersey City and the County of Hudson were not adopted or published in accordance with law.

12. The assessment on the property of prosecutors is not based on valuations as of October 1st, 1918, as provided by law.

13. There is no power, authority or law under which there could be three budgets and tax assessments for the raising of revenues in the City of Jersey City and the County of Hudson for the period December 1st, 1917, to December 31st, 1919.

14. There is no power, authority or law under which there could be separate tax assessment for the raising and collection of the revenues provided for in the tax ordinance budgets and tax assessments brought up by the writ.

15. The tax ordinance, budgets and tax assessments brought up by the writ are a fraud upon the prosecutors.

16. There is no power, authority or law under which the Board of Commissioners of Jersey City, could pass a tax ordinance or budget for the fiscal year ending December 31st, 1918.

17. There is no power, authority or law under which the Hudson County Board of Taxation could fix a rate for local purposes in Jersey City for the fiscal year ending December 31st, 1918.

Reasons.

18. There is no power or authority under Chapter 238 of the Laws of 1918, or any other law for the making of the tax assessment brought up by the writ of a lien on the property of prosecutors on December 20, 1918.

19. Because the said assessments of tax are for divers other good and sufficient reasons invalid, illegal, oppressive and unjust. **10**

20. Because the said assessment of taxes is in excess of and in violation of the provisions of "An Act for the reduction and limitation of the rate of taxation into several taxing districts of this state", being Chapter 116 of the Laws of 1906, and the amendments and supplements thereto.

HARRY LANE,
FRANK J. HIGGINS, **20**
Attorneys for Prosecutors.

30**40**

Respondents' Depositions.

NEW JERSEY SUPREME COURT.

SAMUEL GARRISON, et als.,

Prosecutors,

vs.

10 THE MAYOR AND ALDERMEN of Jersey City,

Respondents.

Jersey City, N. J., Wednesday, November 13, 1918.

Before

HERBERT W. KNIGHT,
Supreme Court Commissioner.

20

APPEARANCES :

HARRY LANE, ESQ., for the Prosecutor;
JOHN MILTON, ESQ., for the Respondents.

(It was stipulated that the depositions might be taken stenographically and the signatures thereto waived.)

HARRY J. KETCHAM, sworn for the respondents.

30 DIRECT EXAMINATION BY MR. MILTON :

Q. Do you occupy an official position in the City of Passaic? A. I do.

Q. What is it? A. City Treasurer.

Q. How long have you been City Treasurer of Passaic? A. I was appointed January 17, 1911; almost eight years.

Q. And you were such City Treasurer in May, June and July of 1918? A. Yes, sir.

40

Harry J. Ketcham—Direct.

Q. Are you familiar with the period of the fiscal year in the City of Passaic? A. I am.

Q. What was the fiscal year in Passaic prior to that passage of Chapter 238 of the Law of 1918?

MR. LANE: Objected to on the ground that it is entirely immaterial, irrelevant, incompetent and not pertinent to the issue in this case, this case only affecting the City of Jersey City and the tax assessment or levy for December. 10

Mr. Milton, will you consent that this objection go through the entire testimony of this witness so that I may not have to object to continually?

MR. MILTON: I will.

A. The fiscal year of the City of Passaic was from July 1st to June 1st. 20

Q. That of course was changed by force of Chapter 238 of the Laws of 1918? A. To December 31st.

Q. Making the fiscal year begin January 1st. and end on December 31st? A. Yes, sir.

Q. During 1917 did the City of Passaic adopt a budget for the fiscal year from July 1, 1917 until June 30, 1918? A. It did.

Q. When was the budget next after that adopted by the City of Passaic? A. In July 1918. 30

Q. Are you able to say on what day it was adopted? A. (Producing a paper) The original budget is here.

Q. This budget was adopted on July 30, 1918? A. That is my understanding according to this budget; I could not swear to that other than from that.

Q. That is the date for which notice was given it would be considered as adopted, on that date? A. Yes, I so understand it. 40

Q. And the resolution which adopted the budg-

Harry J. Ketcham—Direct.

et, according to the original budget which you produced, is as follows: "Resolved that the following budget prepared in conformity with Chapter 192 P. L. 1917, for the City of Passaic, N. J. for the fiscal half year beginning July 1, 1918 and ending June 30, 1918, be and the same is hereby approved and the City Clerk is authorized to publish the necessary notice that a public hearing
10 will be held on Tuesday, July 30, 1918, at three p. m. in the Commission's Chambers, City Hall, when objections thereto may be presented by any taxpayer of the municipality;" that was the form of resolution that adopted the budget? A. Yes, it was adopted in that form; that is the complete form; you will see it bears the original signatures.

Q. That is the original resolution, having appended to it the budget? A. The entire budget.

20 Q. And signed by the Board of Commissioners of the City of Passaic? A. Yes, sir.

Q. That is correct? A. Absolutely.

Q. The period which this budget covered therefor was for July 1918 up to and including December 31, 1918? A. Correct.

Q. I notice that a part of this budget includes certain mandatory appropriations for twelve months as follows:

30	Sinking Fund	\$45,476.95
	Support of Public Schools, made up as follows:	
	General School purposes	269,000.00
	Manual Training	5,000.00
	Vocational training	5,000.00
	Evening schools, foreign born resi- dents	1,000.00

Those are all for a full twelve months?

A. The sinking fund is for the fiscal year, un-
40 der the State Law, beginning the first day of

Harry J. Ketcham—Direct.

January 1918 and ending December 31, 1918; the Board of Education, under the State Laws, for the fiscal year beginning the first day of July 1918 and ending June 30, 1919.

Q. How was the appropriation for the State Road Tax made by the City of Passaic? A. Through the County Tax Board.

Q. Did the County Tax Board add to your budget \$1.00 per thousand on all the real estate of the City of Passaic? A. Correct. 10

Q. For the State Road Tax of 1918? A. Right.

Q. I presume the County Board followed the same procedure with reference to the State School Fund? A. Correct.

Q. What was the amount in that case, do you know? A. I cannot give that.

Q. It would require the certified resolution from the County Tax Board? A. Yes. 20

Q. What are the ratables, if you happen to know, of the City of Passaic in round numbers? A. Somewhere in the neighborhood of fifty-one or fifty-two million, about fifty-two.

Q. So that the sum of approximately, \$52,000 was added to the— A. It is over fifty-four. I know what you want to—

Q. It is over fifty-four? A. Yes, the road tax.

Q. A sum of approximately fifty-four thousand dollars representing a dollar per thousand on ratables was added to the budget appropriations under this budget by the County Tax Board of Passaic County for the purpose of raising the State Road Tax for the year 1918? A. Yes. 30

Q. Do you remember what amount was added by the County Tax Board for School purposes? A. I have not those figures with me.

Q. It is based, you happen to know, is it not, upon two and three-quarter mills per dollar of real estate? A. I am not clear about that. 40

Harry J. Ketcham—Direct.

Q. At any rate a sum of money was added by the County Tax Board to the budget appropriations in order to raise the amount necessary for State Schools, under the law? A. That is right.

Q. For the year 1918? A. Right.

Q. I also observe in the budget of the City of Passaic that in addition to the amount appropriated for salaries and for the purchase of materials for the general carrying on of the city business there were some emergency notes provided for; those had been issued during the prior fiscal year? A. Those notes were issued as demand notes and they were paid off after the first day of July, 1918.

Q. Out of the appropriations made in this budget? A. Yes, sir.

Q. Is the same thing true of the tax revenue bonds and notes? A. No, sir.

Q. I notice also an item of interest on improvement bonds, tax revenue bond and notes, tax title bonds, demand notes, tax anticipation notes, street opening bonds; that item was for interest which would accrue upon those various bonds and obligations after July 1st, 1918 and before December 31st, 1918? A. Would you not rather say interest due instead of accrued?

Q. I think perhaps your term is better. A. That is correct.

Q. I likewise observe an item of payment of maturing bonds, \$18,500, those bonds I presume are obligations which were issued prior to July 1, 1918, but matured after that date? A. That is correct.

Q. And before December 31, 1918? A. Correct.

Q. I also observe two items of interest, one on school bonds of \$26,015.63, and interest on city bonds \$47,711.25; those I take it represent interest which would become due after July 1, 1918 upon permanent issues? A. Correct.

Harry J. Ketcham—Cross.

Q. Has the tax rate been struck by the County Board of Passaic under this budget? A. It has.

Q. What is the rate? A. 1.92.

Q. What was it for the full twelve months period under the preceding budget? A. 2.01.

Q. Have the taxes yet been imposed? A. I don't get that question quite.

Q. Have the taxes yet been collected? A. No. **10**

Q. They do not become a lien until December 20th? A. Correct.

Q. How has the City of Passaic financed itself since July 1, 1918? A. By the issuance of tax anticipation notes.

Q. In anticipation of the collection of taxes to be imposed under the budget and the tax rate struck upon it? A. Yes, sir.

CROSS EXAMINATION BY MR. LANE:

20

Q. You say that the tax rate was 1.92, does that include the tax rate for school purposes too? A. It does.

Q. Can you tell me what the tax rate for local purposes for schools was? A. No; I could have told you that if I had known you wanted to know it.

Q. Can you tell me what the tax rate for local purposes other than school was in the past year?

A. No, I cannot recall that. It can be supplied of course. **30**

Q. The taxes for the fiscal year of Passaic, July 1, 1917 to June 30, 1918 became a lien and were collectible on June 20, 1917, were they not? A. Correct.

Q. And, included in this budget for local purposes is there anything except the appropriation for six months, to wit, from July 1, 1918 to December 31, 1918? A. You mean the budget you are looking at now? **40**

Harry J. Ketcham—Cross.

Q. I do, for local purposes. A. It is for six months, from July 1918 to December 31st. Included in that budget is the appropriation for one year, the fiscal year, of the Sinking Fund Commissioners from January 1, 1918 to December 31, 1918, and the statute that appropriation to be paid on or before December 31, 1918. In addition to that there is the appropriation for the support of the public schools from July 1, 1918 to June 30, 1919.

Q. Is that all? A. I think that is all that is included there; that is for local purposes, for six months, the Sinking Fund for twelve months and the School for twelve months. I think that is all.

Q. Has the City Commission of Passaic taken advantage of this law, chapter 238 of the Laws of 1918, for the purpose of including in the budget a large amount to refund or pay bonded indebtedness for the purpose of juggling the tax rate? A. What is chapter 238?

Q. That is the law changing the fiscal year? A. I want you to put that question again.

Q. (Question read.) A. In the first place I would say that the City of Passaic does not take advantage of any of the laws to juggle anything; I would say that that budget simply includes the payment of bonds as they become due.

Q. Can you state from this budget the amount of the appropriations for the six months for local purposes other than schools? A. You say, local purposes?

Q. Yes. A. It is clearly set out in the budget; \$472,143.80.

Q. Can you tell me what the appropriations for the same purposes were for the preceding fiscal year, or approximately what they were? A. That is set out on that budget; the City Clerk has not balanced it out there (after calculating) \$737,221.98.

Harry J. Ketcham—Cross.

Q. So it is just slightly over one-half for these six months? A. Yes, sir. That is the natural increase at this time.

Q. I assume that a copy of this budget including the resolutions and the appropriations and the comparisons was advertised and published according to law? A. It was. I can give you a copy that appeared in the press (producing paper). 10

Q. I notice in this publication and in the budget that after making the comparison provided for by the act, six months in 1918, you have that as compared with 1917-1918—"twelve months," showing specifically that the comparison is as six months is to twelve months appropriation; is that right? A. That is right. Now may I interrupt you there?

Q. Yes. A. That might be treated by some individuals as comparison, I would not consider it a comparison because it is six months against twelve months. But we were complying with the law. 20

Q. Were there any notices published by the City of Passaic respecting this budget which would show to a taxpayer examining it that this budget was not a budget for six months as compared with the budget for the twelve months of the previous year? 30

MR. MILTON: Objected to on the ground that it calls for a conclusion, and on the further ground that if any notice was published that is the best proof of its contents.

MR. LANE: I withdraw the question.

Q. Were there any notices published respecting this budget except the notice you have referred to? A. I have given you a copy of the advertisement. 40

John J. Ryan—Direct.

Q. Did the ratables in the city increase this year over last year? A. Slightly, not much.

Q. Mr. Ketcham, were there any items in this budget except the item specifically referring to surplus revenue that was inserted in this budget with the idea that the amount would not be expended prior to December 31st and that the city
10 would then have that amount to carry over to surplus revenue? A. There was not.

JOHN J. RYAN, sworn for the respondents.

DIRECT EXAMINATION BY MR. MILTON:

Q. What official position do you hold in the City of Bayonne? A. City Treasurer.

Q. And you have been such City Treasurer for how long? A. Over three and a half years.
20

Q. You were such City Treasurer during all of 1918? A. Yes, sir.

Q. And all of 1917? A. Yes, sir.

Q. When does the fiscal year of the City of Bayonne commence and end? A. It commences on the first day of May and ends on the 30th day of April.

Q. That of course is without reference to the effect of chapter 238 of the Laws of 1918, which
30 changes the fiscal year? A. Yes, sir.

Q. Did the City of Bayonne adopt a budget in the year 1917 for the fiscal year from May 1, 1917 until April 30, 1918?

MR. LANE: Objected to on the ground that this is simply a suit respecting the tax assessment of property in Jersey City; that any inquiry as to anything done in the City of Bayonne or any other city than Jersey City, is entirely irrelevant, immaterial, incompetent
40 and not pertinent to the issue.

John J. Ryan—Direct.

I understand Mr. Milton will stipulate that this objection shall go through the whole line of Mr. Ryan's testimony.

MR. MILTON: Yes.

Q. Did they adopt such a budget? A. They did.

Q. When, after that, was the next budget adopted? A. On or about the 21st of June last. 10

Q. That is the 21st of June, 1918? A. Yes, sir.

Q. For what period of time was that budget adopted? A. Until December 31st, 1918.

Q. That is to say the appropriations were made from May 1st, 1918 until December 31st, 1918? A. Yes sir, eight months.

Q. For eight months of the present calendar year? A. Yes, sir.

Q. Have you a copy of that budget with you? A. I have. 20

Q. Has the tax rate of the City of Bayonne under this last budget referred to been struck by the County Tax Board? A. Yes, sir.

Q. What is it? A. \$26.31 per thousand.

Q. What was the rate for 1917? A. \$27.42.

Q. So that for the full twelve months the rate was \$27.42 and for the eight months it is \$26.31? A. Yes, sir.

Q. I notice that the City of Bayonne included in the budget adopted on June 25th, an item of interest on funded debt, \$145,335; that item had reference to interest which will become due between May 1st and December 31st, 1918? A. Yes. 30

Q. Then there are a series of notes running from \$8,536.54 down to 68 cents for which appropriation was made? A. Yes, sir. I don't think that 68 cents is right though; it might be a book-keeping transaction.

Q. There are some nineteen in number, that is correct, is it? A. Yes, sir. 40

John J. Ryan—Direct.

Q. And those notes I take it were issued prior to the first day of May 1918? A. Yes, sir.

Q. And matured some time between May 1st, 1918 and December 31st, 1918? A. Yes, sir; demand notes.

Q. Then there is an appropriation of \$183,773.03 for account of Sinking Fund? A. Yes, sir.

10 Q. That I take it, Mr. Ryan, is the appropriation that was necessary for the City of Bayonne to make in order to meet the annual requirements of the Sinking Fund so as to amortize your permanent bonds? A. Yes, sir, that is right.

Q. Then there appear also to be various loans for damages, judgments, payments to newspapers, etc., is that correct, substantially, substantially \$60,000? A. Yes, sir.

20 Q. Those were various judgments obtained against the City of Bayonne, and loan obtained by it, prior to May 21, 1918? A. Yes, sir.

Q. Now Mr. Ryan were there any amounts added to the budget, as adopted by the Board of Commissioners, by the County Tax Board of Hudson County? A. Yes, sir.

Q. What were they for? A. State Road purposes, State School purposes, County purposes.

Q. What was the amount for State Road purposes? A. \$70,824.45.

30 Q. And that was for the 1918 State Road Tax? A. Yes, sir.

Q. And represents a dollar a thousand upon the ratables of Bayonne? A. Yes, sir.

Q. What was the amount for State school purposes? A. \$189,415.94.

Q. And that represents the State school tax for the full year of 1918? A. I presume that does, the city end of it, their schools, is only eight months.

40 Q. I am coming to that. What appropriation

John J. Ryan—Direct.

was made by the City of Bayonne for local school purposes? A. \$272,418.84, for eight months.

Q. That was for eight months? A. Yes, sir.

Q. That is to say from May 1, 1918 until December 31, 1918? A. Yes, sir.

Q. The amount that had been appropriated for the previous fiscal was \$299,979.35? A. Yes, sir.

Q. Was the amount appropriated, \$272,418.84, certified to the Board of Commissioners by the Board of School Estimates? A. No; \$408,228.26 was certified by the Board of School Estimates. 10

Q. I find under the column headed "Extra Ordinary" appropriations for the New Jersey State League of Municipalities, Federal Home Economies, New Jersey members, Regimental Fund, for employees in U. S. War Service and appropriations for judgments, aggregating substantially \$33,000. The judgment of \$28,000 had been recovered against the city prior to the first of May, 1918? A. Yes, sir. 20

Q. Notice of the consideration and proposed adoption of this budget was given in accordance with the law? A. Yes, you will find it on the first page there.

Q. The ordinance which was adopted, putting the budget into force reads as follows: "An ordinance relating to taxes for the fiscal year ending the 31st day of December, 1918," at least that is the title of it? A. Yes, sir. 30

Q. The total appropriations by this budget, outside of the money added by the County Tax Board, were \$1,219,144.75? A. Yes, sir.

Q. Exclusive as well of certain resources? A. Yes, sir.

Q. Making the total budget, including the resources, \$1,358,885.37? A. Yes, sir.

Q. In addition to the State school tax and State 40

John J. Ryan—Cross.

road tax which was added to Bayonne's appropriations by the County Tax Board that Board also added Bayonne's pro rata share of the cost of County government? A. Yes, sir.

Q. How much was that? A. \$386,535.67.

Q. And as certified to you by the County Tax Board what were the total appropriations for the
10 eight months of 1918 for the City of Bayonne?

A. The total amount to be raised?

Q. The total amount to be raised. A. \$2,491,-
282.88.

CROSS EXAMINATION BY MR. LANE:

Q. Mr. Ryan, I notice that in the Resolution of the Board of Commissioners of Bayonne there is, preceding the ordinance referred to by Mr. Milton,
20 a resolution reading as follows: "Resolved that the following be and is hereby approved as the tax budget for the term ending December 31, 1918," is that correct? A. Yes, sir; that was adopted for the purpose of giving the notice required by the act.

Q. I understood you to say that the amount requested by the Board of School Estimates was four hundred odd thousand dollars and that the amount actually appropriated was some two
30 hundred and seventy-two thousand dollars? A. Yes, sir.

Q. Can you explain the difference between those? A. Yes, sir.

Q. What was it? A. The amount determined by the Board of School Estimates was for a school year consisting of twelve months and the amount appropriated by the Commissioners was for a school year of eight months.

Q. You have given the entire local tax rate
40 for 1917? A. Yes, sir.

John J. Ryan—Cross.

Q. Can you give it to me for both of those years, for local purposes, exclusive of any appropriation for schools? A. No, I cannot do that because it runs together in our city.

Q. Can you separate it? A. I can give you the city rate.

Q. That includes schools? A. Yes, sir.

Q. The city rate which you gave includes schools? A. Yes, sir. Well now, yes I can give you that, I have just discovered something here. What is your question please? I can give it to you for 1918 exclusive of schools. 10

Q. How much is it for 1918? A. \$17.17.

Q. You cannot give it to me for 1917? A. No, I have not got it.

Q. In that \$17.17 there is included, is there not, the amount appropriated for the local schools? A. Yes. 20

Q. Can you give me the amount, taking out the amount for local schools? A. No.

Q. I assume that this budget was published in substantially the same form as it appears in your minutes? A. I believe it was.

Q. In the comparisons that are made in the budget you have one headed "appropriations to December 31, 1918" and the other heading, with which it is compared, is "appropriations, 1917," is that correct? A. Yes. 30

Q. I notice in these appropriations respecting salary there is, under 1917, simply the words "official salaries?" A. Yes.

Q. I understand, however, the amount that appears under "appropriations to December 31, 1918" only included eight months of the yearly salaries of the different city officials, is that right? A. That is right.

Q. You testified with respect to the Sinking 40

John J. Brophy—Direct.

Fund appropriation, as I understood your testimony you said that that included Sinking Fund appropriations up to December 31, 1918? A. Yes.

Q. And had nothing to do with any annual Sinking Fund appropriation? A. Not as I recall, no, sir.

10 Q. I notice in this budget that while you have under 1917 simply the words "official salaries" that finally at the end you have totaled the official salaries \$100,950., is that right? A. Yes, sir.

Q. Were there any other publications to the public in respect to this budget except the publication of the budget as required by law? A. That is not in my line, sir.

Q. Do you know of any? A. I do not know of any.

20 Q. Did you know of any inclusion in this budget, because of the fact that it was simply a budget to cover the local appropriation for eight months, of any amount to, in effect, juggle the tax rate so as to be a fraud on the taxpayers of Bayonne? A. No.

JOHN J. BROPHY, sworn for the respondents.

DIRECT EXAMINATION BY MR. MILTON:

30 Q. You are the Clerk of the Finance Commission of the City of Paterson? A. Yes, sir.

Q. When did the fiscal year of the City of Paterson begin and end?

MR. LANE: I object on the ground that the testimony is entirely irrelevant, incompetent and immaterial, and not pertinent to the issue as the only issue here pending is the validity of the tax assessment on property in Jersey City.

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John J. Brophy—Direct.

MR. MILTON: We will stipulate that the objection goes through Mr. Brophy's entire testimony.

A. The fiscal year began July 1st and ended June 30th.

Q. Prior to the change as the result of the new act, chapter 238 of the Laws of 1918? A. 10
Yes, sir.

Q. Did the City of Paterson adopt a budget July 1st, 1917 covering the fiscal year up to June 30, 1918? A. Yes, sir.

Q. When, after that was the next budget adopted? A. The next budget was adopted on July 5th if I mistake not; I have it here, a copy of it, (after referring) July 5, 1918. That is the budget (producing a paper).

Q. What period of time did this budget cover? 20
A. From July 1, 1918 to December 31, 1918.

Q. In other words a period of six months? A.
A period of six months.

Q. Has the tax rate been struck on this budget by the County Tax Board of Passaic County? A.
It has.

Q. What is it? A. It is 2.20, or \$22.20 on the thousand.

Q. What is the tax rate for the year 1917? A. 30
\$20.90.

Q. So that for six months the tax rate is \$1.30 more a thousand than it was for the full preceding fiscal year?

Q. You have produced, Mr. Brophy, a budget of the City of Paterson for the period July 1, and December 31, 1918, and I observe in it an item of "Interest on city debt, \$177,000." What was that item for? A. That was to take care of the interest coming due on all notes already included in that. 40

John J. Brophy—Direct.

Q. That is to say it covered the interest on city notes between July 1st and December 31, 1918?

A. Yes, sir.

Q. Then there is an item of \$50,087.86 which covers four or five classes of deficits in the 1917 budget? A. Yes, sir.

10 Q. The principal item being due to the discontinuance of saloons? A. Yes, sir, the largest one.

Q. Then there is an item of \$60,874.91 for the City's share of assessments made for improvements? A. Yes, sir.

Q. That is that portion of the cost was assessed upon the city at large? A. Yes, sir.

Q. And those assessments run from 1908-09-10-13 and down to 1918? A. Yes, those were the periods which came due this year at this particular time.

20 Q. Then there appears to be an item of \$160,364.30 for term bonds in the Sinking Fund? A. Yes, that is the annual provision by the law for the amortization of those bonds when due.

Q. Then there is an item of \$58,000 for serial bonds? A. That is money provided under the law where the city is taking advantage of retiring the bonds annually, the annual appropriation.

30 Q. That is to say there were serial bonds issued in past years a portion of which fell due this year? A. Yes, sir.

Q. And it was to meet those bonds that this appropriation was made? A. Yes, sir; that is to comply with the law to segregate the term bonds from the serial bonds so as to set apart and show them separately.

Q. The provision for your term bonds goes into the Sinking Fund? A. Yes, sir.

40 Q. And your provision for the serial bonds is paid out— A. Paid out to liquidate that indebtedness.

John J. Brophy—Cross.

Q. The appropriation for local school purposes was \$511,413.77? A. Yes, sir.

Q. And covered what period of time? A. That covered from July 1, 1918 to June 30, 1919.

Q. That was the full fiscal year for the Board of Education? A. Yes, sir, certified by the Board of School Estimates.

Q. In addition to the appropriations as formulated by the local authorities there were a number of items I assume added by the County Tax Board? A. Yes, sir.

Q. There was an item added for the State Road Tax for 1918? A. Yes, sir.

Q. Do you recall what that was? A. For this year one hundred and eighteen thousand dollars in round figures.

Q. And for State school purposes? A. \$306,150.94.

Q. In addition to that I presume there is another item representing the share of the City of Paterson of the cost of maintaining the county government of the County of Passaic? A. The County tax assessed by the County Board of Taxation was \$450,490.23.

Q. Do you happen to know what the fiscal year of the County of Passaic was? A. The fiscal year of the County of Passaic I think begins on January 1st and ends December 31st.

Q. It was not affected by the act? A. I do not think the county was affected by that.

Q. So that, in the case of the City of Paterson, you had to pay your share of the full fiscal year of the County of Passaic? A. Yes, sir.

CROSS EXAMINATION BY MR. LANE:

Q. Have you the statement that was published in the newspapers of this budget showing the

John J. Brophy—Cross.

comparisons? A. I think I have. There is a copy of it, certified to by the newspaper (producing a paper).

Q. Can you give me the tax rate for local purposes of the City of Paterson other than the local school rate? A. For this year, as I recall it, approximately it was 1.98 or 1.99.

10 Q. That includes schools does it not? A. That is our portion of everything—excepting schools, I could not tell you.

Q. That includes all appropriations for all purposes including schools? A. Yes, sir.

Q. But you cannot give it to us exclusive of the schools? A. No, I could not.

Q. I notice in this notice that was published in the newspaper, that it was entitled as follows: 20 “Notice is hereby given that on July 5, at four o’clock p. m., City Hall, Room 21, there will be a hearing of any objections to the adoption of the tax budget for the fiscal year beginning July 1, 1918 and ending December 31, 1918,” is that correct? A. Yes, sir.

Q. Can you tell me the amount of the appropriations for local purposes exclusive of schools in this last tax budget? A. I think the amount is stated there if I recollect rightly. There is the amount to be raised by tax for local purposes and 30 here is the resolution and tax ordinance with the additional amount added to it by the County Board of Taxation together with deficits that had to be made up according to law.

Q. The amount to be raised by taxation for city purposes is \$1,776,489.39? A. Yes, sir.

Q. That includes, of course, the amount for local schools? A. No, that amount does not include the amount for local schools, that is determined afterwards by the County Board of Taxa- 40 tion; we have no means of knowing what the

John J. Brophy—Cross.

school expenses will be until they determine that.

Q. You yourself fixed upon the local school amount after hearing from the Board of School Estimate? A. Yes, I thought you said County school.

Q. No, I said local schools. That amount includes local schools? A. Yes, sir.

Q. The local schools amount to \$572,000? A. **10**
Yes, sir.

Q. Which would leave the amount for local purposes exclusive of local schools \$1,200,000.? A. Yes, approximately about that.

Q. And for the preceding year the amount to be raised by taxation was approximately, \$1,590,000. and the amount for local schools was \$364,000.? A. Yes, sir.

Q. Which would leave for the entire preceding year \$1,230,000. approximately? A. About that, **20**
yes, sir. That difference this year is due a great deal to war bonuses they allowed the school teachers.

Q. With reference to these assessments, some of them have been running from 1908? A. Yes, sir.

Q. And some of them were issued in 1918, or levied in 1918? A. They were issued under certain legal provisions where they were to retire annually certain payments as the city's share to liquidate the indebtedness, but they are stipulated **30**
under those years and some of them will very likely expire this year and they are listed in that manner.

Q. Are they only the proportion to expire in 1918? A. Yes, they are the stipulated amount; the stipulated amount set for each year.

Q. The taxes from July 1, 1917 to June 30, 1918 became a lien and were collectible in December 1917? A. Yes, sir. **40**

John J. Brophy—Re-Direct—Re-Cross.

Q. Have you got the heading of this resolution adopting the budget? A. It is here.

Q. Do you say this resolution was adopted on July 5, 1918 or thereabouts? A. Yes, sir, July 5, 1918.

Q. According to this it seems to have been passed on September 19, 1918, and approved September 20, 1918? A. That is a resolution that the County Board had determined the ratables, but the budget itself was adopted at that time; that is the County Board's approval.

RE-DIRECT EXAMINATION:

Q. The City of Paterson I assume has been financing itself since July 1st by the issuance of tax anticipation bonds and notes? A. Yes, sir.

Q. Predicated upon the budget which has been adopted? A. Yes, sir.

Q. The total appropriations by the City of Paterson including the State school tax, State Road tax and County tax was \$2,698,260.61? A. Yes, sir.

Q. The title of the ordinance adopting the budget in question is this: "Be it ordained by the Board of Finance of the City of Paterson that there shall be assessed, raised and collected for the fiscal year 1918 the sum of \$2,698,260.61 for the purpose of making the appropriations set forth in the following statement of resources for the fiscal year 1918"? A. Yes, sir.

RE-CROSS EXAMINATION:

Q. As a matter of fact, Mr. Brophy, can you tell me why that resolution was headed in that way rather than stating to the taxpayers of Paterson that it was a budget for local purposes for only six months? A. The hearing was held on

Edward Hunter—Direct.

the budget prepared and adopted under the law as interpreted by our legal department, and a hearing held and then subsequently when the ratables were all in, the County Board of Taxation simply referred it to us with the ratables under which the Board adopted this resolution setting forth the total amount of money that had to be raised.

10

Q. In other words, the Board of Finance in July went ahead and adopted a regular annual budget? A. Yes, sir.

Q. The same as though there had been no new law passed? A. No, they adopted the budget under the conditions, stipulating from July 1 to December 31; the budget so states.

Q. Where do they state that? A. Right in the budget there, right in the notice which you read a moment ago.

20

Q. Irrespective of the fact that the resolution itself reads that the fiscal year ends December 31, 1918, the notice of the taxpayers shows that it was a six months budget so far as local purposes went? A. Yes, sir, that is all, just for local purposes.

EDWARD HUNTER, sworn for the respondents.

DIRECT EXAMINATION BY MR. MILTON:

30

Q. What position do you hold officially in the City of Hoboken? A. Assistant to the Director of the Department of Revenue and Finances.

Q. How long have you been such assistant? A. Since March 1915.

Q. When did the fiscal year of Hoboken begin and end?

MR. LANE: I object on the ground that

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Edward Hunter—Direct.

this is simply a case affecting the assessment of property in Jersey City for taxation; any testimony respecting Hoboken is entirely irrelevant, immaterial and incompetent, and not pertinent to the issue.

10 Do you make the same stipulation, Mr. Milton, as to the objection applying to the whole line of this witness's testimony?

MR. MILTON: Yes.

A. Prior to 1918 it began on the first Monday of May in each year.

Q. The first Monday? A. The first Monday in May of each year.

Q. And ran for twelve months? A. For twelve months.

20 Q. Prior to 1918 and through the year 1917 did the City of Hoboken adopt a budget to run the city from the first Monday of May 1917 for twelve months? A. Yes, sir.

Q. When next after that did the City of Hoboken adopt a budget? A. On May 28, 1918 a budget was approved for appropriations beginning May 6, 1918, to December 31, 1918, practically for eight months.

Q. They made a budget? A. Yes, sir.

30 Q. Have you the resolution or ordinance which adopted the budget? A. I have a copy of the ordinance approving of the budget with the addition of the schools.

Q. And this ordinance reads as follows: "The Board of Commissioners of the City of Hoboken do ordain as follows, that there shall be assessed, raised by taxation and collected for the period beginning May 6th to December 30, 1918, the sum of \$1,255,977.44 for the purpose of meeting the appropriations set forth in the following statement of resources and appropriations for said
40 period"? A. That is right.

Edward Hunter—Direct.

Q. Added to that amount, Mr. Hunter, are certain provisions for State school tax, State road tax as Hoboken's share of the cost of the county government? A. Yes, sir.

Q. Those were added by the Hudson County Board of Taxation? A. Yes, sir.

Q. And in the case of the State road tax how much was it? A. Well I do not know the exact amount, it is in the neighborhood of \$87,000. **10**

Q. The year 1918? A. Yes, sir.

Q. And the State school tax? A. I do not know the amount of the school or county tax. I have a tax bill here showing the rates.

Q. Do you happen to know the amount that was added for Hoboken's share of the cost of the County government? A. No, I do not.

Q. You do not happen to have with you the certificate from the County Board of Taxation? A. No, I do not. **20**

Q. At any rate there were amounts added for these purposes by the County Board to your appropriations? A. Yes, sir.

Q. I notice Mr. Hunter that under the Department of Revenue and Finance Appropriation, item No. 9, there is "funded debt \$128,206.49," what is that for? A. That is the interest on the bonded debt from May 6th until the end of the year. **30**

Q. 1918? A. December 31st.

Q. And the following items "Interest on notes of prior years \$782.50. Interest on tax anticipation notes \$18,383.46. Interest on emergency notes \$1,317. Interest on fire house notes \$39.54," represent interest upon obligations which were issued prior to May 6, 1918? A. Prior to May 6th, yes, sir.

Q. And the interest appointed to become due some time after May 6th and before December **40**

Edward Hunter—Direct.

31st, 1918? A. No, the way we had in Hoboken, those notes—tax anticipation bonds or notes are issued in most cases payable on demand and we pay the interest and the interest is included in the subsequent year's budget.

10 Q. So that in the case of the tax anticipation notes it would represent interest paid the preceding fiscal year? A. Yes, from 1917 to 1918.

Q. And appropriated the following fiscal year? A. Yes.

20 Q. The items of "Loan. Military training. Painting City Hall. Emergency No. 2, Fire House" all represent appropriations to redeem obligations issued prior to May 6th? A. Yes. For instance that Military training is an appropriation to a school to organize a military—to furnish them with uniforms etc. and that is included in this year's subsequent year's budget the same as the others.

Q. The Sinking Fund item \$143,556.49, is the amount that was necessary to be placed in the Sinking Fund in order to meet amortization requirements? A. That is according to the certificate received from Trenton and included in that is a special Sinking Fund of nearly \$16,000. The Sinking Fund was short.

30 Q. In order to bring the Sinking Fund up to date there had to be an additional appropriation of \$16,000? A. Yes, one-fifth of a mill I think.

Q. And that was an annual appropriation? A. Yes, sir.

Q. That is the item of \$143,000? A. Yes, sir.

Q. That was an annual appropriation? A. Yes, sir.

40 Q. What was the amount that was appropriated for local school purposes? A. The total amount of requirements called for was \$698,052; of that amount Hoboken had to raise \$430,695.51.

Edward Hunter—Cross.

Q. What became of the difference? A. The difference is apportioned by the State.

Q. Has the tax rate been struck by the County Board on this budget? A. Yes, sir.

Q. What was it? A. We have two tax rates in Hoboken, what they call the lower part is \$24.64 a thousand and what is called the Weehawken addition is \$24.09 a thousand. 10

Q. What was it for the preceding year? A. For the old portion of Hoboken \$23.23 and for the Weehawken addition \$23.63.

Q. So that for the eight months from May to December 31st inclusive the rate was \$24.64 for Hoboken proper? A. Yes, sir.

Q. As opposed to \$23.23 for the preceding fiscal year? A. Yes, sir.

Q. Hoboken, I assume, has been financing itself since May 1917 by the issuance of tax anticipation notes? A. Tax anticipation bonds, yes, sir. 20

Q. Predicated upon the budget as adopted? A. Yes, sir.

Q. The taxes have not yet been collected? A. No, bills are not yet out.

Q. They appear to be ready, however? A. They are printed.

CROSS EXAMINATION BY MR. LANE:

Q. Mr. Hunter, do you know the provision in chapter 238 of the Laws of 1918 that specifically provides that the amount of the tax rate shall not be greater than the preceding rate of taxes? A. That applies for city purposes I understand. 30

Q. Exactly, and for city purposes you say it is less for eight months than the preceding year? A. For city purposes it is more for eight months than it was for the year, but that includes the schools. 40

Edward Hunter—Cross.

Q. Can you tell what the city tax rate for local purposes other than schools is? A. No.

Q. Can you tell me whether it is less or more than the preceding year? A. For schools, there is an increase in the appropriation for schools alone for each year, that is each year, for the full year, of \$130,547, which would on our rat-
 10 ables equal about a dollar fifty a thousand on the rate so that would bring our rates for city purposes lower than it was in 1917, a difference of about \$1.40 I think in the two rates.

Q. I observe in this notice that was published in the papers that it was stated that notice is given that the Board of Commissioners of the City of Hoboken on a certain date approved the following budget of municipal appropriations,
 20 May 6th, 1918, to December 31st, 1918. Is that correct? A. Yes, sir.

Q. And in your comparisons between the appropriations and the preceding appropriations you have headed the one column "Balance of 1918" and the other column "Appropriations for 1917," is that correct? A. Yes, sir.

Q. And your appropriations for the balance of the year 1918 amount to \$1,046,000 as against \$1,167,000 for the entire 1917 year? A. Yes, sir.

Q. I notice that the interest on the funded debt for the balance of 1918 amounts to \$128,000 as against \$193,000 for 1917, can you explain the difference? A. The difference in the period, one
 30 is for eight months and the other is for a year.

Q. As far as interest on funded debt was concerned you figured on eight months only and not the entire year? A. Yes, sir.

Q. Does that apply on the balance of this interest that appears in here, on bonds? A. Yes,
 40 sir.

Dennis F. Collins—Direct.

BY MR. MILTON:

Q. The appropriation that was made for schools is for the full fiscal school year? A. Yes, sir, from July 1, 1918 to June 30, 1919.

DENNIS F. COLLINS, sworn for the respondents.

DIRECT EXAMINATION BY MR. MILTON:

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Q. You occupy what official position in the City of Elizabeth? A. Comptroller.

Q. And you have been Comptroller for how long? A. Two and a half years.

Q. When did the fiscal year of the City of Elizabeth begin and end?

MR. LANE: I object on the ground that the issue in this case simply affects the tax assessment of property in Jersey City, and that the question is entirely immaterial, irrelevant, incompetent and not pertinent to the issue.

20

Do you stipulate the objection may go through the whole line of this witness's testimony?

MR. MILTON: Yes.

A. It began on the 1st of June and ended on the 30th of June, prior to the adoption of chapter 238 of the Laws of 1918.

30

Q. I assume then that in 1917 the City of Elizabeth adopted a budget carrying appropriations for the fiscal year from July 1, 1917 to June 30, 1918? A. Yes, sir.

Q. When after that was the next budget adopted? A. In June 1918.

Q. Do you recollect the date? A. The latter part of June.

Q. And it covered appropriations from July 1, 1918 to December 31st? A. Yes, sir.

40

Dennis F. Collins—Direct.

Q. Or a period of six months? A. Yes, sir.

Q. Has the County Tax Board of Union County struck the tax rate on that budget? A. Yes, sir.

Q. What is it? A. \$20.40 per thousand.

Q. What was it for the preceding year? A. \$20.60.

10 Q. Have you the budget or a copy of it with you? A. Yes, sir, I have a certified copy of the minutes of Council adopting the budget.

Q. The appropriation for local school purposes was \$264,820? A. Yes, sir.

Q. For what period was that? A. The period beginning July 1, 1918 and ending June 30, 1919.

Q. In other words for the full school fiscal year? A. Yes, sir.

Q. And that was the amount certified to you by the Board of School Estimates? A. Yes, sir.

20 Q. I notice an item of "Interest on City debt \$91,770.75," that item generally represents the interest which would be due between July 1, and December 31, 1918 upon the permanent city debt? A. Yes, sir.

Q. "Interest on tax notes \$8,000." represents interest that would become due during the same period upon tax notes issued prior to July 1, 1918? A. Yes, sir.

30 Q. "Interest on emergency notes \$564,086" represents interest which would become due during the same period upon notes issued for emergency purposes prior to July 1, 1918? A. Yes, sir.

Q. There are two Sinking Fund provisions one of \$250,985.42, which is for redemption and adjustment costs; that represents the amount necessary to be appropriated in order to amortize certain debts of the city? A. No.

40 Q. What does it represent? A. There was \$100,000 additional added in there.

Dennis F. Collins—Direct.

Q. For what purpose? A. For the purpose of making easier or lighter the amount to be raised for that purpose in the years intervening between the time the budget was adopted and when our redemption bonds become due in July 1922.

Q. The balance of it represents— A. One hundred and fifty thousand and some odd dollars was the amount required as certified to by the State Commissioner of Accounts, but we had his approval for adding in this additional \$100,000. 10

Q. The second item of Sinking Fund is for the redemption of miscellaneous bonds \$49,907.06 and I assume represents an amount that was necessary to redeem bonds that were to come due between July 1 and December 31, 1918? A. Yes, sir.

Q. There is an item of "Emergency notes \$16,304.49" which I take it represents such moneys as were necessary to redeem notes that had been issued prior to July 1, 1918? A. Yes, sir. 20

Q. Then there is an item "Special sewer Fund retiring notes \$18,500;" that also I presume represents appropriations for the purpose of retiring obligations issued prior to July 1, 1918? A. Yes, sir.

Q. In addition to the amount appropriated by the City Council of Elizabeth I assume the County Tax Board added to your appropriation certain sums of money for State Road Tax, State School Tax and Elizabeth's share of the cost of the County government? A. Yes, sir. 30

Q. What was the amount of the State School Tax for 1918? A. \$206,114.32.

Q. What was the amount of the State Road Tax for 1917? A. \$80,841.77.

Q. What was the share of Elizabeth of the cost of the County government? A. \$289,737. There was an additional item for special County Road bonds interest amounting to about \$2000. 40

Dennis F. Collins—Cross.

Q. The taxes to be levied under the budget, and the tax rate as it was struck, have not yet been collected? A. No.

Q. And do not become a lien until December 20th? A. Yes, sir.

Q. The bills I presume are about ready to be sent out? A. Most of them are out now.

10 Q. And Elizabeth has been financing itself through borrowed money obtained upon tax anticipation notes or bonds? A. Yes, sir.

Q. Predicated on this budget as adopted? A. Yes, sir.

Q. What is the total amount to be appropriated by Elizabeth including the amount added by the County Board of Taxation, under this budget? A. \$1,781,097.40.

20 Q. That includes the State School Tax, the State Road Tax and the County Government? A. Yes.

Q. Have you any idea how much Elizabeth has borrowed upon tax anticipation notes, prior to the collection of taxes under this budget? A. No, I could not say.

CROSS-EXAMINATION BY MR. LANE:

30 Q. Can you tell me what the amount of tax rate for local purposes other than schools under this budget is? A. No, sir.

Q. Can you tell me what the rate was for local purposes other than schools last year? A. I cannot recall.

Q. Can you tell me what the local rate for municipal purposes including schools was under this last budget, or in 1917? A. Without the county?

40 Q. Without the county, just local rates. A. I cannot tell you.

Dennis F. Collins—Cross.

Q. Generally, have you considered the adoption of an annual budget for 1919? A. Not as yet.

Q. Have you considered the question of putting in anything for local school purposes under that budget? A. That is a matter I have officially called the attention of the Mayor and the Chairman or President of the Board of School Estimates to.

10

Q. That there is no provision for putting it in? A. That there is no provision for putting it in.

Q. I notice that in most of these appropriations outside of salaries the amount appropriated for the various items under the local appropriations for the six months ending December 31, 1918 is greatly in excess of one-half of the appropriations for the preceding years; can you explain that? A. Yes.

Q. How? A. Increased wage to employees, anormal increase in administration expenses and there is a big increase, I think it is \$34,000, due to the adoption of the two platoon system, there is quite an increase there, and generally due to like causes—increase of salaries.

20

Q. I said, outside of salaries? A. Oh, I beg your pardon. Wage increase and enormous increase in administration expenses.

Q. For instance, streets and highways \$81,000 against \$98,000? A. There were some items in that appropriation which were put in that might have been taken care of otherwise; exceptional propositions such as the crossing at Cherry and West Grand Streets; the streets do not meet and it is a very dangerous crossing, car tracks run on West Grand Street and it is an automobile route and in order to make a more safe crossing at that intersection we purchased properties on the corners and we are demolishing them and we put the entire cost of that improvement in this year's budget.

30

40

Dennis F. Collins—Cross.

Q. As a matter of fact is it not because out of this tax in December 1918 you only have to pay the running expenses of the city for six months that all of the items have been included in this appropriation? A. That was not the sense, the moving thought. We realized that by reason of only having to figure on the amount necessary for
10 those items on a six months period—

Q. That therefore putting them in would not increase the regular tax rate to any great extent, whereas if you had to appropriate for the entire twelve months on the same basis it would be a great deal higher? A. May I put it in another way?

Q. Yes. A. My thought was to hold the tax rate at about the same figure that it was the year previous. I assumed it would be well, and our
20 people would be well satisfied if the tax rate remained about that same point, and then included this \$100,000 in our Sinking Fund and provided for these other items in order to be in a position for the coming year when taxes are bound to go up, that it might be held down to a reasonably low rate and lower than the other municipalities would have.

Q. Even though they were only paying the running expenses for six months? A. Yes, sir.
30 Next year it will be twelve months. The main reason as I gather it is that if a great many of these items were put in next year's tax levy it would make the rate go up a great deal higher than it is bound to go anyway.

Q. For instance, the \$100,000? A. Yes, sir.

Q. I notice the tax ordinance is entitled "Budget for the period ending December 31, 1918," is that correct? A. Yes, sir.

Q. And the reason why "period" is used instead
40 of "year" is because it was a six months period? A. Yes, sir.

Daniel O'Regan—Direct.

Q. Can you tell me why in the comparison of appropriations which is in this budget the one item simply says "1918" and the other item is simply "1917," instead of saying to the taxpayer that one was simply for six months as compared to an entire year? A. The general heading ought to convey that meaning.

10

BY MR. MILTON:

Q. He did not intend to deceive the taxpayers I suppose? A. No.

BY MR. LANE:

Q. Why was it not put in "balance of 1918" or "six months" the same as it was put in in the City of Paterson? A. You will have to ask our Law Department; they attend to those matters.

20

DANIEL O'REGAN, sworn for the respondents.

DIRECT EXAMINATION BY MR. MILTON:

Q. You are the acting Clerk of the City of Jersey City? A. I am.

Q. And were in July 1918? A. I was.

Q. Did you cause to be published in the Jersey Journal and Hudson Observer notices of the proposed adoption of the budget? A. I did.

30

Q. For how many insertions were they published? A. Two.

Q. On what dates? A. July 27th and a subsequent date.

Q. You have here the notices and budget as published in the local press that I have referred to? A. Yes, sir.

(It is stipulated that the copy of the notice annexed to the return is a copy of the notice that was published.)

40

TO THE HONORABLE THE JUDGES OF THE SUPREME
COURT OF THE STATE OF NEW JERSEY:

I, HERBERT W. KNIGHT, a Supreme Court Commissioner of the State of New Jersey do respectfully certify that the foregoing depositions were taken before me at the time and place in the manner and under the stipulations and agreements therein set forth.

10 HERBERT W. KNIGHT,
Supreme Court Commissioner of New Jersey.

Prosecutors' Depositions.

NEW JERSEY SUPREME COURT.

20	SAMUEL W. GARRISON, <i>et als.</i> ,	}	On Certiorari.
	<i>Prosecutors,</i>		
	v.		
	THE MAYOR AND ALDERMEN OF JERSEY CITY, <i>et als.</i> ,		
	<i>Respondents.</i>		

30 Taking of depositions in above stated case before
HERBERT W. KNIGHT, Supreme Court Commissioner,
pursuant to notice hereunto attached,
at the office of the City Counsel, City Hall, Jersey City,
New Jersey, on Friday, the 8th day of November, 1918, at ten o'clock, A. M.

APPEARANCES:

HARRY LANE, Esq., and FRANK J. HIGGINS, Esq.,
for the Prosecutors.

JOHN MILTON, Esq., and EDWARD P. STOUT, Esq.,
for the Respondents.

40 (It was stipulated and agreed by and between

Charles F. O'Brien—Direct.

the counsel for the respective parties that the depositions of the witnesses might be taken stenographically and the signatures of witnesses thereto waived.)

MR. LANE: I am going to examine the commissioners very superficially, because I have not seen a copy of the detailed report and I may want to ask more questions after I have examined it. 10

CHARLES F. O'BRIEN, sworn for the Prosecutors.

DIRECT EXAMINATION BY MR. LANE:

Q. Commissioner, you are the Director of the Department of Public Safety? A. Yes, sir. 20

Q. And you made, or caused to be made, for your department, a statement of the appropriations for this budget? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. In that statement of appropriations for this budget, did you include the current expenses for the month of December, 1918, only? A. Is that the paper?

Q. This is a copy of the Taxing Ordinance and Budget. A. December, only. 30

Q. Therefore, the appropriations for your department in this budget, making up the taxes, the so-called seventeen dollar and thirty cent tax, is simply for December? A. Yes, sir.

Q. Commissioner, you voted, I presume, on this entire tax ordinance and budget? A. Yes, sir.

Q. Do you personally know very much about it, outside of your own department? A. The entire budget?

Q. Yes. A. Simply what I found out at a 40

Charles F. O'Brien—Direct.

general conference, that is a conference of the Commissioners.

Q. And did you understand that you were making up a budget, so far as the city was concerned, simply for December? A. Yes, sir.

10 Q. Commissioner, I notice in this taxing ordinance, that it is entitled "A Budget for the fiscal year, ending the 31st day of December, 1918"; can you explain how that appears to be in the title?

MR. MILTON: I object to that on the ground that the ordinance itself is the best proof of its contents, and on the further ground that the question calls for a conclusion from the witness.

20 SUPREME COURT COMMISSIONER: I have no power to rule.

Q. (Former question repeated as follows:—"Commissioner, I notice in this taxing ordinance, that it is entitled 'A budget for the fiscal year, ending the 31st day of December, 1918', can you explain how that appears to be in the title?")

A. I cannot explain that specifically at this moment—the constitution of the ordinance itself or the figures contained in the appropriation.

30 Q. As I understand it, you have not really prepared for this hearing at all? A. No.

Q. It may be I will recall you and that may be one of the questions I will ask you. A. As a matter of fact, I received this notice last night about five-thirty and I exerted every energy to get here at ten o'clock. I didn't know what the whole affair was about.

Q. Now, Commissioner, you have been Commissioner of Jersey City for four or five years?

40 A. No, since the 15th of May, 1917.

Charles F. O'Brien—Direct.

Q. Oh, yes; since the 15th of May, 1917, but you were, however, commissioner when the fiscal budget for the year December 1st, 1917, to December 1st, 1918, was adopted? A. Yes sir.

Q. And that was adopted some time in July or August of 1917? A. Yes, sir.

Q. And that fiscal budget was—the taxes in that fiscal budget was levied and collectible in December, 1917? A. Yes, sir. 10

Q. Therefore, in voting on these appropriations—this budget in question—you had or did not include, did you, appropriations prior to December 1st, 1918? A. No, sir.

Q. And you did not include any appropriations subsequent to December 31, 1918? A. No, sir.

Q. And the appropriation from January 1st, 1919—I mean by that the appropriation from January 1st, 1919, for the year to December 31st, 1919, will be included in your next budget? 20

MR. MILTON: I object to that on the ground it calls for a legal conclusion.

The Witness: Does the Commissioner rule?

SUPREME COURT COMMISSIONER: No, I have no power to rule.

A. Temporarily, I must be excused from answering that. 30

Q. Now, Commissioner, these taxes of \$17.30 only pays the taxes of the taxpayer to December 31st, 1918, is that right?

MR. MILTON: I object to that on the ground that it calls for a legal conclusion.

A. I won't say it does.

Q. Will you say it does not? A. It does not.

Q. What does it include, Commissioner, according to your understanding? 40

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MR. MILTON: I object to that on the ground that the budget itself and the ordinance for the appropriation, or the taxing ordinance, are the best proof of the contents of the budget—of what it does contain—and on the further ground that the question calls for a conclusion.

10

A. Why, it was included in the budget in December 31st, 1919.

Q. 1919? A. 1918. These seventeens, eighteens and nineteens are somewhat promiscuous.

Q. So the tax was paid in December, 1917, for the fiscal year ending December 1st, 1918, as you understand it?

MR. MILTON: Objected to. It calls for a conclusion.

20

A. Yes.

MR. LANE: He is the man that levies the taxes of Jersey City, or one of the men.

A. Yes, that is my understanding.

Q. And the taxes of \$17.30 will pay to December 31st, 1918—

MR. MILTON: Same objection.

30

A. Yes.

Q. And the taxes for the year January 1st, 1919, to December 31st, 1919, will be included in your next budget?

MR. MILTON: Objected to on the ground it calls for a conclusion.

A. Yes, sir.

Q. Commissioner, can you state why it is in these appropriations in your taxing ordinance
40 and budget, and what purports to be a published

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copy of the notice of that ordinance—why it is in comparing the appropriations in this budget, for the month of December it was compared with the appropriations for the entire year ending December 1st, 1918?

MR. MILTON: Objected to on the ground it calls for a conclusion and the question is unintelligible.

10

A. Not offhand I couldn't answer that question, Mr. Lane.

Q. Why can't you answer that question, didn't you vote on this— A. I did, but there are some particulars there I would have to compare with the ordinance itself. I would have to look over the particular specific figures.

Q. Well, we will send for those if you will tell us what you want. A. It is what you want.

20

Q. You want to see the original rather than this copy? A. Not so much that as the figures; they are more spread out and not as comprehensive.

Q. You want to see the detailed budget? A. Yes, sir.

Q. I will ask Mr. Gannon for the detailed budget for the year 1918. A. Yes, sir.

Q. Commissioner, I noticed that the statement was made for the \$17.30 tax as a full year's taxes, the same as the \$21.00 tax which was levied in 1917, in December, 1917; will you tell me in what particular, if any, the \$17.30 tax differs from the \$21.00 tax which was levied in December, 1917?

30

MR. MILTON: Objected to on the ground that it calls for a conclusion. The contents of the budget for the fiscal year from December 1st to November 30th, 1918, and the

40

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budget which resulted in the levying of the so-called \$17.30 tax, are the best proof.

A. I won't answer that at present.

Q. Why not?

MR. MILTON: Same objection as heretofore.

MR. LANE: I am not trying to trip you up,
10 I am trying to get the facts.

The Witness: I am willing to give you any facts I have got.

Q. You certainly know what is not included in that \$17.30 tax that was not included in the \$21.00 tax. For instance, in the \$21.00 tax you know there was included, do you not, the full appropriation for the police department for the entire year? A. Yes.

20 Q. Is that right? A. Yes.

Q. You know in the \$17.30 tax, the budget under which that was levied, there was not a full appropriation for the police department, but simply one month? A. I know this—

Q. Answer yes or no.

MR. MILTON: I submit the witness is entitled to answer this in the way he sees best.

MR. LANE: All right, go ahead. I don't
30 want to appear to be tripping you up.

Witness: I know the \$17.30 tax, in combination with the annual or semi-annual tax which will be in force in 1919 will strike an average—it will include everything as it did in the 1917 budget.

Q. And therefore you mean by that, if I am wrong correct me, in the \$17.30 tax and in the tax that will be paid semi-annually in 1919, will include the appropriations for the police department from December 1st, 1918, to December 31st,
40 1919, or a period of thirteen months?

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MR. MILTON: Objected to on the ground it calls for a conclusion.

A. No.

Q. I may be dense, but do tell me what you did mean. A. You wish me to answer—I will correct that. The idea of the answer to be obtained is, that thirteen months must be included in twelve months—

10

Q. The answer is, from what taxes do you intend to obtain the running expenses for the year, the thirteen months starting December 1st, 1918?

A. January 1st, 1919 to December 31st, 1919.

Q. And during that time there will be how many tax levies? A. So far as I know one.

Q. The \$17.30 one? A. And the one to be made up.

Q. In other words, there will be the \$17.30 one and one which will be made up for the year 1919? A. If it is paid semi-annually, yes.

20

Q. Commissioner, did you have knowledge of the statement that was made by the Director of Revenue and Finance and which appeared in the public press on November 1st, 1918, in which statement was contained that these taxes of \$17.30 was the regular taxes that had always been paid by the taxpayers on December 20th?

30

MR. MILTON: I ask counsel if he is referring to the printed publication in the political campaign—

MR. LANE: Yes, and signed by the director of revenue and finance.

MR. MILTON: It appears to have been inserted by John F. Boyle.

MR. LANE: This is the statement. The question is did you see that and did you have knowledge of it?

40

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Witness: Yes.

Q. You saw it of course on the first day it was in the paper, that is November 1st? A. As far as I can recall, yes.

Q. And you knew it was to appear the next day? A. No, I did not.

10 Q. And you—well, did you do anything to put the taxpayers right and to correct any misstatements that were made in that paper?

MR. MILTON: Objected to on the ground it is based on an unwarranted assumption of facts.

Q. Did you do anything to put them right? A. I gave them my views on this particular question; of what value these views were I do not know. I think they were of some value, judging
20 from the results.

Q. Commissioner, will you kindly look at that statement and tell me if that statement is correct from the portion where it says "To the taxpayers of Jersey City—

MR. MILTON: Objected to on the ground it is irrelevant, immaterial and incompetent and on the further ground it calls for a conclusion.

30 A. Judging from these statements here in the newspaper—I can't really answer that question; I will say I do not know.

Q. Well, will you tell me whether or not it is correct, that the \$17.30 tax is the regular tax that is always and has always been paid on December 20th?

MR. MILTON: I object on the ground it calls for a conclusion.

4 A. What?

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Q. Were these the same taxes that are always levied or whether there is anything left out or anything put in? Do you know? A. No.

Q. Do you know what the tax represents?

MR. MILTON: What tax?

MR. LANE: The \$17.30 tax.

A. Yes.

10

Q. What? A. It is the tax payable for certain properties, the amount being fixed from the ratables in Jersey City.

Q. What did it cover, what properties?

MR. MILTON: The same objection, that it calls for a conclusion and upon the further ground that the taxing ordinance is the best proof.

A. It was to cover the properties within the period stated.

20

Q. It was to cover, so far as your department was concerned, up to December 31st, 1918, only?

A. I would strike out the word "only", I know it was to include that.

Q. Only that was so far as your department was concerned? A. Yes, sir.

Q. Anything else in your department? A. No.

Witness: There are a great many phases and conditions the outside world know nothing about because of war, sickness—and assigned to particular work, and so on.

30

Q. By that I suppose you mean, it costs a little more than ordinary times? A. Yes, sir.

Q. State, if you can, how much more money in proportion you figured it cost for December than it did in the previous year? A. I can't answer that now.

Q. But you can get the information? A. Yes, sir.

40

Charles F. O'Brien—Direct.

Q. Commissioner, can you tell me what is included in the appropriation of your department, under incidental expenses of director, \$1400? A. from that paper I cannot, no.

Q. Can you tell me from looking at the detailed budget, what it was? A. No.

10 Q. This one item, \$1400, can you tell me what it is, incidental. expenses of directors? A. It may be—

Q. No, what is it? A. I cannot tell you from that.

Q. Can you tell me what that appropriation is for \$1400? A. It may be, pads, pens, paper, ink, gasoline, auto, etc.

Q. Have you any record in your office that will give you that information? A. Yes, sir.

20 Q. Will you produce it? A. I will.

Q. Do you know, Commissioner, under what law you were acting when you made this budget up?

MR. MILTON: That is objected to.

A. What do you mean by that, "under what law"? You mean what statute—the law of what particular year?

30 Q. What particular statute—any one you mention. I will get the laws and let you look it up. A. None, except following precedents.

Q. Commissioner, what precedents do you refer to?

MR. MILTON: That is objected to.

A. General precedents of good government as established by the City Commission 1913-1917.

40 Q. Is that the precedent you refer to, in including the item of \$1400 for incidental expenses for directors for one month? A. Yes.

Charles F. O'Brien—Direct.

MR. MILTON: That is objected to as heretofore.

Q. Now, Commissioner, you think that that item might include pads and pen and ink and a few other things? A. Yes, as well as oil and gasoline.

Q. Don't you get your oil and gasoline, I mean for city purposes, don't you get it from the City's garage? A. Yes, sir. 10

Q. Therefore, it would not be included in that. A. Well, there happen to be six patrol wagons. If business is unusually brisk in the First Precinct because of the use of the automobile there—in other words, if there are more cases to be tried in court and more arrests to be made, than there were in the preceding year, naturally we have to use more gasoline and more oil, and some little parts of machines replaced, and so on, that is an incidental expense as I take it. 20

Q. That would not come under the executive office, that would come under the police or fire department for which you have claimed six thousand dollars. A. It would be included in the general amount.

Q. It would not be included in this \$1400? A. I did not understand the distinction. The \$1400 is under the executive office, that would not cover the patrol wagon. 30

Q. Commissioner, I am going to ask you to familiarize yourself with this budget so that anything I may want to ask you about you won't be at sea. A. I will be glad to give you that, Mr. Lane. Really, the war work of various kinds is taking up our time more than the itemizing and familiarizing of the budget is concerned, and I have no doubt when I look over these particular items upon which you choose to dwell, I will be 40

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able to give a reasonable answer, to suit a fair minded man, such as I take yourself to be, to the information you desire.

Q. What do you know about the items included in the item of fixed charges of \$1,500,000? A. With regard to what?

10 Q. I assume you voted to put this item in the budget? A. Yes, sir.

Q. Will you state why the item of \$576,323.12, temporary loan bonds, was voted upon to be put in the budget?

MR. MILTON: Objected to on the ground that it calls for a conclusion.

A. To meet the requirements of the situation.

20 Q. Will you tell why you put that in that budget instead of the next annual budget of 1919, starting January 1st, 1919?

MR. MILTON: That is objected to on the ground that it calls for a conclusion.

A. Because the ordinance required it.

Q. What ordinance? A. Passed by the City Commission.

Q. You voted for that ordinance? A. Yes, sir.

30 Q. Why?

MR. MILTON: Objected to on the same ground.

A. The circumstances demanded it.

Q. What circumstances?

MR. MILTON: Same objection.

A. The circumstances connected with the running of the City Government.

40 Q. Do you know what these temporary loan bonds are, when they were issued?

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MR. MILTON: We will furnish counsel with a transcript, with an itemized statement of these loan bonds if he desires it.

A. I prefer—I don't want to be captious, I want to give you every bit of information I have.

Q. We are hedging—perhaps I am hedging here. What I am trying to get at is why they were included in this short budget and not held for the regular annual budget. 10

MR. MILTON: Objected to on the ground that it calls for a conclusion.

Q. If you will allow me to go over the records in detail of the meeting covering these particular points, I will be glad to tell you what I know. I could then give you particulars at greater length later on.

Q. I show you a copy of the minutes of the Board of Commissioners. A. Is there any particular part you wish me to cover? 20

Q. Yes, tell me why this \$674,323.12 were put in that budget and, if you can, by refreshing your recollection, what these temporary loan bonds were.

MR. MILTON: Objected to as calling for a conclusion.

A. I cannot unless I brush up my memory. 30

Q. I don't want to be unfair— A. You have been very fair.

Q. Commissioner, do you know whether or not you were acting under section 3 of chapter 238 of the laws of 1918 in making up this budget?

MR. MILTON: I object to that as calling for a conclusion.

A. I cannot answer that unless I see the statute. 40

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MR. LANE: The stenographer will leave a blank space for the answer to the question which will be given later on.

10 Q. Commissioner, I notice in this detailed statement of the budget, for the Department of Public Safety that there is the heading "Appropriation 1917-1918." I am only taking this one as an illustration, and under that 1917-1918 heading of appropriations, appears five thousand dollars and under the appropriation for 1918-1919 appears \$6500. A. Yes, sir.

Q. Can you tell me what months or years that \$6500 is supposed to cover?

20 MR. MILTON: Objected to on the ground that the witness cannot be examined on a paper that has not been offered and received in evidence, and on the further ground that it calls for a conclusion.

A. Answer that yes or no?

Q. No, tell me what months it represents. A. I won't answer that until I have the particular paper covering these particular items as presented.

30 Q. Now, can you tell me also—it says here under the heading, "Fractional part, appropriations, December, 1918, \$1400"; now, will you tell me what that \$1400 is a fractional part of?

MR. MILTON: Objection as heretofore, that the witness is being examined as to the contents of a paper not offered and received in evidence and on the further ground that it calls for a conclusion.

40 Q. Commissioner, I show you what appears to be a detailed statement of the Department of Revenue and Finance, budget for appropriations

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for the month of December, 1918, and I ask you what that purports to be?

MR. MILTON: Objected to for the same reason stated last above.

A. I cannot say, sir.

Q. I will ask you, Commissioner, to produce your total appropriations for the month of December, 1918. A. I will produce them later; yes, sir. 10

Q. Produce them now, isn't that them? A. That is alleged to be a copy of them; yes, sir.

Q. Cannot you tell by looking at it whether that is or is not? A. No, I cannot.

Q. Is that what it purports to be, Budget of Appropriation for the month of December, 1918, for the Department of Public Safety? A. It is a copy of it. 20

MR. LANE: Have you any objection to that copy being marked for identification?

MR. MILTON: No.

MR. LANE: I ask the Commissioner to mark it for identification.

(Budget last above referred to received for identification and marked P. 1, Ident.)

Q. Commissioner, have you any other papers from which that detailed budget of appropriations were made up? A. Well, I have the bills that came in— 30

Q. The bills have not come in yet for the month of December? A. No, I am speaking in a general way, the itemizing of the general accounts.

Q. Have you any such itemized statement in your office that made up that detailed statement? A. Between what periods. 40

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Q. What that detailed statement covers? A. I have an itemized account of everything that has come in up to the first of November.

Q. But anything since is not included in the detailed statement of appropriations after December first?

10 MR. MILTON: Objected to on the ground that the appropriations are the best evidence.

Witness: I will rest on that objection.

Q. Are there any other papers that you know of that show what this detailed budget is? A. Not that I know of.

Q. Now, Commissioner, this statement, P. 1 for identification, headed Appropriations for the Year 1918-1919, will you kindly state what months
20 these appropriations cover?

MR. MILTON: Objected to on the ground that the paper is the best evidence.

A. I won't state that.

Q. I ask you what months it covers?

MR. MILTON: Same objection as heretofore.

A. It is for the fiscal year.

Q. What fiscal year?

30

MR. MILTON: That is further objected to on the ground that the columns to which counsel is pointing is a mere arrangement of figures for the purpose of calculation only, and has no relation to the budget appropriations as actually adopted.

Q. On this detailed budget you have appropriations 1917-1918? A. Yes, sir.

Q. Will you kindly state what months these
40 appropriations cover?

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MR. MILTON: Objected to on the same ground as stated before.

A. Oh, it is clear now. That was in the original budget compiled some time in July covering the original fiscal year before the so-called Pierson laws were put into effect.

Q. I don't want to confuse you; I am talking about the appropriation headed 1917-1918. A. Yes, sir. 10

Q. Last July or 1917? A. 1917.

Q. Therefore, that was for the fiscal year ending November 30th, 1918; am I right? A. Yes, sir.

Q. Now, you have, under heading, "Appropriations 1918-1919"—will you state what months that covers? 20

MR. MILTON: Same objection as heretofore.

A. That would be the same arrangement if the Pierson laws had not gone into effect.

Q. That would be for the fiscal year from December 1st to November 30th, 1919? A. Yes, sir.

Q. But that was not used, from what I understand you to say?

MR. MILTON: Same objection.

A. I don't quite understand "that was not used". 30

Q. You say because of the Pierson laws going into effect, you did not adopt these figures under that heading; is that right? A. Well, I know I am to get the same five thousand salary, and I know the deputy is to get the same four thousand.

Q. Yes, and you know you have not made any budget for \$6,500 for incidental expenses of directors, don't you? A. That is tentative. 40

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Q. And your third heading is "fractional part, appropriation, December 1918," under that heading the incidental expenses are \$1,400.

MR. MILTON: Objected to on the same ground as heretofore.

10 Q. That is the expense for the month December only? A. No.

Q. No? A. No, sir.

Q. General budget—

Q. I am talking about the \$1,400 now and not the \$6,500. A. Yes, sir.

Q. That \$1,400 was to go into which budget? A. Into the budget 1918-1919.

Q. There is no such budget—you didn't adopt any such budget did you? A. No, the budget that is to be adopted.

20 Q. Is there any to be adopted 1918-1919? A. Why the same general budget at the end of the fiscal year.

Q. Don't you know your next budget is going to be from January 1st, 1919 and that you are not going to have any budget from December 1st, 1918 to November 30th, 1919? A. No, I did not know that. I know that these items are to be included in that new budget.

30 Q. Which items, point them out.

MR. MILTON: Objected to on the same ground.

Q. I am talking about the \$1,400 item, Commissioner— A. Yes, that is to go into the general budget.

Q. Which general budget? A. The new one.

Q. The one you are going to adopt? A. The one we have adopted with reference to the \$17.30 tax. This \$17.30 tax is to be included in the new

40

Charles F. O'Brien—Direct.

budget; that is not the equalization of that as a general budget it is only this \$1,400 that is included in it.

Q. That \$1,400 is included in the budget you adopted, or that was adopted last July, therefore that \$1,400 is not shown in any other budget is it? A. It would go in any other budget, by the same token.

10

I cannot elucidate any further than I have, Mr. Lane. Whether we are at cross purposes or what, I don't know—

Q. I am trying to get light? A. And I am trying to give you light, as far as I can.

Q. You would like something to refresh your recollection, Commissioner? A. Absolutely.

Q. Well now, Commissioner, will you produce the papers you have in connection with the adoption of this budget in your department? A. I will give you anything and everything I have.

20

Q. Now, can you state just what they are now so that I will just know what I am to examine? A. I don't know what you will want.

Q. I want everything in your department connected with the budget, A. I will give you every paper and every item. When do you want them?

Q. Tomorrow morning. A. Well, if this takes precedence over everything else I will give up everything until tomorrow morning. I am working on war work afternoons, and nights. I will be working nights for the next ten days, but if this takes precedence I will try and get someone in my place.

30

Q. I do not think in order to get out these details it is necessary to take your entire personal attention. A. I want to make sure everything is all right. I am one of those persons who thinks it is necessary in order to have a thing done right, to do it yourself.

40

Charles F. O'Brien—Cross.

Q. You cannot produce these papers this morning? A. Not very well.

Q. What are you going to produce? A. Whatever you wish.

Q. Tomorrow morning? A. If you insist, tomorrow morning you shall have them.

10 Q. If I insist on tomorrow morning you will have them here? A. Yes, sir.

MR. LANE: That is all.

Of course, I have not entirely concluded with Mr. O'Brien, but after I get these details I will.

CROSS-EXAMINATION BY MR. MILTON:

20 Q. The first intimation you had you were to testify this morning at ten o'clock was a telephonic communication from your office that your presence was desired here by Mr. Lane? A. Yes, in the afternoon I went to the various fire houses, when the peace treaty was alleged to have been concluded with instructions for the blowing of whistles and ringing of bells. I received this message from the deputy to appear this morning, that is Friday morning—at ten o'clock.

30 Q. And prior to the time you were called on the stand and examined with reference to the budget for the fiscal year from December 1st, 1917 to November 30th, 1918, had you had any opportunity to examine the budget or to refresh your recollection? A. None at all.

Q. That is also true with reference to the budget which resulted in the levying of the tax assessment that is now being reviewed, in this case? A. Yes, sir.

40 Q. You had no intimation or knowledge as to what subject you were to be examined upon?

Charles F. O'Brien—Cross.

A. That is correct, it came to me as somewhat of a surprise.

Q. The statement which counsel has referred to as having been published in the Jersey Journal in this city under date of November 1st, and 2nd, was not prepared by you? A. No, sir.

Q. And it was in fact prepared by a number of persons in this city who were active in the welfare and behalf of Edward I. Edwards who was candidate for State Senator and other candidates on the Democratic ticket? A. Yes, sir. 10

Q. And formed a part of the recent campaign finished on November 5th? A. Yes, in which they so generously and favorably responded.

Q. Referring to the item of expenses of \$1,400, it is a fact, isn't it, that frequently detectives and policemen are sent out of the city for the purpose of investigating crimes committed in this jurisdiction, and for the purpose of apprehending criminals? A. Yes, sir. The latest was the Somerville case where four men were convicted through the vigilance of the Jersey City police, four men were convicted, one of murder in the first degree, with a recommendation of the jury that the sentence be life imprisonment and the other three were convicted in the second degree. 20

Q. And the expenses of these detectives and officers, who sometimes have to go to different parts of the country are paid out of the incidental appropriation of \$1,400 which is fixed for that purpose? A. Yes, sir. 30

Q. And as a matter of fact it is more or less guess work as to the amount that will be required? A. Yes, sir; it is problematic.

Q. Now that your attention has been called to the particular appropriations, isn't it a fact that gasoline and oil are not paid for out of that fund? A. Yes, sir; upon recollection it is true. 40

Charles F. O'Brien—Re-Direct.

Q. Your testimony that the gasoline and oil was paid for out of that fund was given before you had an opportunity to recollect? A. Yes, sir. I would like to correct that.

10 Q. With reference to the form of the budget and the form of the taxing ordinance and the appropriations for school purposes and state appropriations you depend largely on the Director of Revenue and Finance and the Law Department as to the regularity and legality of this appropriation? A. Yes, sir.

Q. You make no particular investigation of your own to observe whether or not such appropriations are being made?

20 MR. LANE: I object on cross-examination of a hostile witness, to questions of that kind. He should be permitted to explain.

A. Let me make my answer by saying I don't want to be regarded as a hostile witness, and the answer to the second part is yes. I assume upon recommendation of the Director of Finance supported by Corporation Counsel that their appropriations and recommendations are correct.

RE-DIRECT EXAMINATION BY MR. LANE:

30 Q. What personal investigation did you make?

A. The same personal investigation that would arouse my interest as a member of the Commission at a general conference.

Q. Tell us what it was.

MR. MILTON: He said he made none.

A. I said my interest—

Q. Your interest was directed to the Department of Public Safety? A. Yes, sir.

40 Q. You had a personal interest in that? A. Yes, sir.

Charles F. O'Brien—Re-Direct.

Q. How about the other departments, did you make any investigation at all? A. Oh, yes; at the conference. We took the items of each appropriation and, like sensible men, we talked these things over and came to a general conclusion.

Q. Just state what personal investigation you made with reference to the items included in the total of the one million, five hundred dollar fixed charges? A. My interest was to the extent that I asked the Commissioner of Revenue and Finance what that covered. 10

Q. Did you find out? A. Yes.

Q. What? A. I don't recall at this particular moment.

Q. That is all that you did in reference to the putting in in the budget of the million five hundred thousand dollars— A. No. 20

Q. —in the budget amounting to \$1,900,000? A. I had absolute faith in Mr. Gannon.

Q. You don't mean you would vote these things in the budget solely and simply on the recommendation of Mr. Gannon? A. No, sir.

Q. And Commissioner Gannon is not solely responsible for having this in the budget? A. No, sir.

Q. It is passed upon by five members of the Commission? A. Yes, sir. 30

40

Frank Hague—Direct.

FRANK HAGUE, sworn for the prosecutors.

DIRECT EXAMINATION BY MR. LANE:

Q. You are the Mayor of Jersey City and a member of the Board of Commissioners? A. Yes, sir.

10 Q. And have been such for some period of four or five years? A. A member of the Commission, as Director of Public Safety for four years, and Mayor since May, 1917.

Q. Mayor, you voted, of course, on the adoption of this taxing ordinance or budget in question? A. Yes, sir.

Q. And you conferred about that with your associates? A. Yes, sir.

Q. And I assume voted intelligibly upon it? 20 A. As intelligent as I could.

Q. Do you object at this time to an examination in reference to details of that budget on the ground you are not prepared, or have you all these details fully in mind at this time? A. I have not refreshed my memory. I go over them as carefully as I can, and, as a rule, I have them in my mind. I do not object to being touched on it.

Q. Mayor, you in July 1917 or in August 1917 adopted a budget for the fiscal year commencing 30 December 1, 1917 and ending November 30th, 1918, did you not? A. What is that? What are the dates again? You said 1919.

Q. I meant 1918. In July 1917 you adopted the budget for the fiscal year from December 1st, 1917 to November 30, 1918? A. Yes.

Q. And no part of that fiscal year is included in this budget, is it?

MR. MILTON: I object to that.

40 A. It was, one month.

Frank Hague—Direct.

Q. Oh, no. It is the year. There is nothing prior to December 1st, 1918 included in this budget, is there? A. No, nothing prior.

MR. MILTON: You are talking now in reference to the City purposes?

The Witness: You are talking of the old budget, the last year's budget we adopted, and that we are working on at present. **10**

Q. That carries you up to November 30, 1918?

A. That is what you are referring to?

Q. Yes. Now this particular budget, that is a one month budget?

MR. MILTON: I object to the question because it calls for a conclusion.

Q. In regard to the Board of Education, you have included in here a million three hundred odd thousands for the fiscal year, July 1st, 1918 to June 30, 1919? A. The Board of Education? **20**

Q. Yes. A. Yes, that is true. I don't know the exact figures.

Q. And so far as the rest of this budget is concerned, \$1,995,000, is it or not simply a one month's budget?

MR. MILTON: Objected to on the ground the question calls for a conclusion. You have omitted a reference to Sinking Fund provisions, the payment of the bonds, interest on bonds. **30**

A. Do I have to answer that?

Q. Unless Mr. Milton will advise you not to.

A. I do not think—repeat the question.

Q. (Previous question read as follows: "And so far as the rest of this budget is concerned, \$1,995,000, is it or not simply one month's budget?") A. No. **40**

Frank Hague—Direct.

Q. Why not? A. You should recall there is bonds, the Sinking Fund and all that. You could not consider that a one-month's budget. As far as the salary account goes it is, but when you take the total amount you cannot call it that.

10 Q. Will you state why it was that in the notice in the newspaper, a copy of which you have before you, it is stated to be a budget for the fiscal year ending December 31st, 1918?

MR. MILTON: Objected to on the ground it calls for a conclusion.

A. You are referring to the newspaper?

Q. No, I am referring to that which you put in there—which the Commissioners put in there.

A. What is the question again?

20 Q. (Previous question read as follows: "Will you state why it was that in the notice in the newspaper, a copy of which you have before you, it is stated to be a budget for the fiscal year ending December 31st, 1918?") A. Is that in the notice here?

Q. Yes. A. Then it is true.

30 Q. Is that for the fiscal year ending July 31st, 1918? A. Yes. You must remember in the conference we were discussing that thing eight or nine hours and every member of the Law Department was called in to render all the legal advice they possibly could. And in discussing that we brought up matters which I cannot recall at this time, which I would recall from examining the typewritten form. If that is what we decided, that is true. If the minutes of the meeting at that time can be produced to show whatever I have decided, then that is true. I do not know how the minutes are prepared.

40 Q. I show you a copy of the minutes of the

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regular adjourned meeting of the Board of Commissioners— A. Will you just read it?

Q. —held on Wednesday, July 24th, 1918, at which the whole five Commissioners were present, at which a resolution was presented by Commissioner Gannon, entitled "Resolved that the following ordinance, entitled 'An ordinance relating to taxes for the fiscal year ending the 31st day of December, 1918' be and the same is hereby approved and the City Clerk is directed to advertise" and so forth. A. You see they did not embody that in the resolution. Apparently the Corporation Counsel or Mr. Gannon did not think it was necessary, but whatever transpired at the conference, if that is in the paid advertisement it is because we decided on that. 10

Q. I am asking why it is that in that resolution it was stated to be an appropriation for the fiscal year ending December 31st, 1918? 20

MR. MILTON: Objected to because it calls for a conclusion.

A. That is why it was decided on.

Q. Can you tell me the reason for it? A. Because it is right.

Q. In making up the budget were you making up a budget for the fiscal year ending December 31st, 1918? A. If that is what the resolution calls for, or what the introduction of that budget calls for— 30

Q. Irrespective of what the resolution calls for—

MR. MILTON: I object.

A. Now, Counsellor, just a minute. You must realize I am a pretty busy man. It is not to avoid anything, but when you go to work and take 40

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a matter covering a million or two million dollars of items, it is impossible for any man to memorize all the discussions that took place at that conference, and the only possible chance I have is records that I can refer to.

10 Q. Exactly. But I am asking you whether or not in voting for that resolution, in voting for that budget, you were voting for the budget for the fiscal year ending December 31st, 1918? A. If the records show that, yes.

20 Q. Will you state what items in that budget—you may pick them out, (handing witness paper)—outside of the school appropriation refer to anything prior to December 1st, 1918? A. You have got to realize that you are asking me to do something that at the time I had the advice of the Corporation Counsel and Commissioner Gannon who was familiar with the financial standing of our city. Now, if I could ask Commissioner Gannon this I might answer the question.

Q. Then you would prefer to reflect on it or refresh your memory on it, I would say? A. I would prefer to.

Q. You cannot at this time state whether there were any items included in that budget prior to December 1st, 1918?

30 MR. MILTON: Objected to on the ground the budget is the best proof.

A. You see that confuses me. If you will ask the question again I will try to answer it.

Q. (Previous question read as follows: "Q. You cannot at this time state whether there are any items included in that budget prior to December 1st, 1918?") A. I would say no.

40 Q. Therefore, can you state at this time why you proceeded in due form to adopt a budget that is entitled for the fiscal year ending December 31st, 1918?

Frank Hague—Direct.

MR. MILTON: That is likewise objected to because it calls for a conclusion.

A. The Pierson Law I presumed ordered us or moved us to do it. We followed the law.

Q. Can you state under what particular law you were acting? A. Under the Pierson Act. The title of the law I don't know. I am not a lawyer. 10

Q. That is the act of 1918 you refer to? A. Yes.

Q. Mayor, can you state why, in making up this budget which on its face appears to be for a fiscal year, the comparisons required under the statute were comparisons made in your department, I would say, for executive officers' salaries—I will say your own salary, \$458.33, as compared with the last appropriation for the same purpose, \$5,500. 20

MR. MILTON: Objected to on the ground it calls for a conclusion.

A. I presume we carry that according to the Pierson Act.

Q. But you knew at that time, did you not, that you were comparing the appropriation you were making for one month with the entire year's appropriation of the preceding year? A. We did not. 30

Q. I show it to you, the very first item there. A. Oh, that is, yes. What is it?

Q. \$458 as against \$5,500. A. Why, sure. One-twelfth is \$458 for my salary.

Q. But making those comparisons you do not compare it with one-twelfth of the preceding year. Will you state why that was done? A. Under the Pierson Act directing us.

Q. Have you got the detailed budget for your department? A. Commissioner Gannon has it. 40

Frank Hague—Direct.

MR. MILTON: Your colleague has it.

Q. Mayor, you have a fair idea of the financial management of the city, I assume, and you know do you not, that there is a budget to be made up from January 1st, 1919 to December 31st, 191

A. Yes.

10 Q. To cover that period? A. Yes.

Q. Do you know, as a matter of fact, Mayor, that so far as the law now stands there is no way or method in which to include any legal school appropriation outside of the school appropriation from July 1st, 1918 to June 30, 1919?

MR. MILTON: Objected to on the ground it calls for a conclusion.

A. That is true. At the conference at that
20 time we were advised there was no way of making the appropriation for the school purposes.

Q. Yes, and there is no legal way to put in the local school budget in the January, 1919, budget?

MR. MILTON: Objected to as calling for a conclusion.

A. That is our advice at that time.

Q. And do you not know that the next annual budget adopted or to be adopted by the City of
30 Jersey City was the annual budget for the year 1919?

MR. MILTON: Objected to as calling for a conclusion.

A. Will you repeat that, please?

Q. (Previous question read as follows: "And do you not know that the next annual budget adopted or to be adopted by the City of Jersey City was the annual budget for the year 1919?")

40 A. What do you mean?

Frank Hague—Direct.

Q. The next after the adoption by the City Commissioners of the budget for the fiscal year ending November 30, 1918.

MR. MILTON: Objected to on the ground it calls for a conclusion.

A. I want to answer that question properly. May I hear it again? 10

Q. (Previous question again read). A. You are getting at the school appropriations?

Q. I am talking about the whole thing, the next annual budget after the budget that was adopted— A. In July?

Q. Not last July. In July 1917, for the fiscal year ending November 30th. A. Will you read that again?

Q. (Previous question again read). A. Where is your 1917 in there counsel? 1918 you have got it. 20

MR. LANE: I withdraw that question.

Q. In July, 1917, you adopted a budget for the fiscal year, December 1st, 1917 to November 30, 1918, under which the taxes became due or were collectible in December, 1917? A. 1918.

Q. 1917. A. Yes, that is true. 1917 is right; the same year we made the budget. I was thinking of the fiscal year beginning the year following, that it does not—one month. 30

Q. But you know as a matter of fact that under the Pierson acts the next annual budget to be adopted after that budget was the annual budget for the year commencing January 1st, 1919 and ending December 31st, 1919?

MR. MILTON: Objected to on the ground it calls for a conclusion.

A. No. I will say that is not so. Under the 40

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Pierson Law as it has been interpreted to me we have to meet in July to compare our budget.

Q. What kind of a budget, annual budget?

MR. MILTON: Objected to as calling for a conclusion.

10 A. I do not just recall now. You see you are asking me legal questions.

Q. Yes, but you are one of the men who acted on that? A. That is true. I acted at the time, but you want to know by what authority and why I acted. Now, my authority is here.

Q. In voting on this resolution in July 1918 were you voting for annual budget or some other kind of a budget?

MR. MILTON: Objected to as calling for a conclusion.

20 A. I say I voted for it after a conference with the Legal Department and the Director of Revenue and Finance, and when the discussion would come up the advice of those gentlemen would be obtained by the other four Commissioners and the discussion would take place and the question was satisfactorily answered to us or otherwise we would not have voted for it. Now, whatever the discussion was I cannot recall now, but whatever
30 was done was done according to law as interpreted by the legal advisor and the Director of Revenue and Finance, who is also a lawyer.

Q. But, Mayor, you can tell me, can you not, whether or not that budget when you voted for it was an annual budget or some other kind of budget? A. Well, now, counsel—

MR. MILTON: Objected to on the ground it calls for a conclusion.

40 The Witness: I will have to decline to answer because—

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Q. Can you or can you not say?

MR. MILTON: Same objection.

A. You must realize I am a layman in legal questions that are involved, and when I obtained advice I as a general rule followed it—particularly from the Law Department or the Director of Revenue and Finance, or whatever the result was, was guided by both. 10

Q. Can you tell me wherein the tax of \$17.30 in the scope it covers differs from the tax of \$21 in December 1917?

MR. MILTON: Objected to on the ground it calls for a legal conclusion, and upon the further ground that the two budgets referred to are the best proof of any difference between them. 20

A. I will say that you must realize we are like a Board of Directors of a bank. We call in the financial man, and we are advised on problems confronting us, and the advice of the financial man of the bank and the advice of the legal advisor of the bank is obtained by the Board of Directors. We are the Directors. We are asked to vote on a problem, and the advice was apparently satisfactory to us and therefore we voted. Now the advice of the Corporation Counsel and the revenue and finance man must have been obtained on that question. Therefore my answer would be absolutely the same as to the previous question. 30

Q. Mayor, you know, do you not, that in December 1917 revenues were obtained from the \$21 tax for the entire year? A. Yes that is true.

Q. Which year ran from December 1st, 1917 to November 30, 1918? A. That is true. 40

Q. And you also know, Mayor, that when this

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\$17.30 tax is collected that the revenue of that will be immediately available to the city for either the month of December or for the payment of any of these matters that are contained in this budget?

10 MR. MILTON: Objected to as calling for a legal conclusion.

A. It will be available just as soon as it is collected, do you mean?

Q. Exactly. A. Yes.

Q. And therefore there is a tax of \$21 in December 1917 and there is a tax of \$17.30 in December, 1918?

MR. MILTON: Same objection.

A. Yes.

20 Q. And you also know that the appropriations under which the \$17.30 tax is levied will not be covered in any budget made up by the City Commissioners for the new fiscal year, January 1st, 1919 to December 31st, 1919? A. I don't think the monthly salary of December will be included, but the school budget practically will be included.

Q. The school budget will be included to June 30th— A. In the annual budget we do not provide for that. That is already provided for. I
30 do not imagine we can put it in twice.

Q. Unless it is stricken out of here? A. That is true.

Q. Those taxes levied under that new budget will be payable in June, semi-annually, and in December? A. Yes that is true.

Q. And that will pay the taxes up to December 31st, 1919?

4 MR. MILTON: Same objection as heretofore noted.

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A. Yes.

Q. Is that right? A. Yes.

Q. And therefore, Mayor, you know that for the administration and expenses of the city, the appropriations made from December 1, 1917 to December 31st, 1919, that being two years and one month, will be met by the \$21 tax in December 1917, the \$17.30 tax in December 1918 and the tax which will be levied under the new budget payable semi-annually in June and in December, 1919. Is that right? 10

MR. MILTON: Objected to on the ground it calls for a legal conclusion, and upon the further ground the question contains an unwarranted assumption of fact. It assumes that included in the three budgets referred to, the three tax rates referred to, appear only the current running expenses of these periods for the city, whereas, the fact is that forming part of these budgets are the annual appropriations to the State of New Jersey for State schools for the calendar year of 1917, for the calendar year of 1918, and there will be included in the budget of 1919 an appropriation for State schools for the calendar year of 1919. Likewise as to the State Road Tax for those three calendar years, 1917, 1918 and 1919, and likewise there will be included the appropriations added by the County Tax Board for Jersey City's part or share of the cost of the County Government, for the fiscal year, of the County of Hudson. 20 30

MR. LANE: I think that Mr. Milton's statement is perhaps proper, but my question went to the administration and expenses of the city.

(Last question read.) 40

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A. No, I would not say that is right. You say "Expenses of the city." Of course, it is an expense of the city to meet this road tax.

Q. I am not talking about that at all. A. You are talking of our annual salary account—

Q. City expenses. A. I see. Yes.

10 Q. And therefore, Mayor, that means that for the two years and one month of the local expenses there will be three tax levies to meet them?

MR. MILTON: Same objection as stated before.

A. You say for two years and one month there will be three tax levies?

Q. Yes, to meet them. A. I don't know Counsellor. There is a little law business in there.

20 Q. No. It is a question of fact.

MR. HIGGINS: There will be the last year, for one month, and the next year.

The Witness: Yes. Now, I do not want to answer that question because it is a little confusing. You say it is a question of whether there are two tax levies or three?

30 Q. Yes. A. Let me answer it as intelligently as I can. You see it is more simple to sit at a table and ask questions—when you are putting your entire weight on two or three men, it is a difficult thing to come in here and answer these things offhand. That is a question I don't want to answer—not that I am withholding anything, but I would sooner get advice from Commissioner Gannon or Mr. Milton.

Q. I am perfectly willing to have you confer with them. A. Can I ask Mr. Gannon a question?

40 Q. Certainly. A. (Witness confers with Mr.

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Gannon.) I will refer to the statement of Mr. Milton as being my answer.

Q. Then I will ask what your answer is. A. I would say that the explanation of Mr. Milton in his objection would be my answer to that question.

Q. What I am asking is this. It is perfectly plain. I don't care whether the tax rate is \$1.00, or five dollars or twenty-five dollars, but what I do want to know is this: If the local expenses of the city for the two years and one month, ending December 31st, 1919, as to whether or not they are going to be met by the proportion of the City's tax in the \$21 tax, by the proportion of the city tax in the \$17.30 tax and by the proportion of the city tax in the 1919 tax, being three tax levies for appropriations for two years and one month? A. Yes. When we meet in January and there are no other taxes levied that is all there is going to be, three. 10 20

Q. Are you going to prepare another tax levy in January? A. No, but I would say that in meeting the law on January 1st, you can either have two or three. I would say there is three.

Q. There is no question about that? A. Yes. I want to get it straight. There is no use in my saying two, to avoid the question, but my reason for hesitating was I feel that was a very technical question and it was a question you were apparently going up on and I did not want to answer it without giving it ample thought. I wanted to try to get the thing as straight as I could, as much to help the City as the Commissioners and everyone involved. That is all. 30

Q. Mayor, will you tell me this: Whether— A. Not if you are reading it out of the Journal, I can't.

Q. I am reading it out of your statement. I 40

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am sure it would not be published without your O. K. on it? A. Don't charge me with everything that says.

Q. Will you state, Mayor, that the only tax, or that the tax which is to be paid in December, is the regular tax in all particulars that has always been paid on December 20th?

10

MR. MILTON: Objected to on the ground it calls for a conclusion.

A. I would say yes.

Q. In all particulars? A. What do you mean by "all particulars"?

Q. Does it include, Mayor, the expenses of the running of the city for twelve months? A. What?

Q. The \$17.30. A. This budget we prepared?

Q. Yes.

20

MR. MILTON: Objected to on the ground the budget is the best proof of what it includes; and the question calls for legal conclusion.

A. Well, now, I don't know. You see that is a legal question.

Q. Now, that is a matter of dollars and cents, and I think you know something about that, so far as City finances are concerned. A. You asked

30

me—

Q. Whether this budget— A. Goes for the paying of the salaries for one year?

Q. Not salaries, for the city expenses. A. No.

Q. One month? A. One month. It has got to be only one month; the salary is only one month; so it cannot be for the entire year; because Commissioner O'Brien is not going to accept \$415 for a year's salary.

40

Q. Mayor, the tax of \$21 that was paid on De-

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cember 20th did include the twelve months of the running of the city, didn't it?

MR. MILTON: Objected to on the ground question calls for a conclusion, and on the ground the budget is the best proof.

A. Yes.

Q. And therefore in that particular the taxes differ, do they not? 10

MR. MILTON: Same objection.

A. Yes.

Q. Now, you, of course, had knowledge of the statement issued by the Director of Revenue & Finance of Jersey City, to the taxpayers of Jersey City, did you not?

MR. MILTON: When? 20

MR. LANE: On November 1st and 2nd, 1918.

MR. MILTON: Which one?

MR. LANE: The statement which appears on page 9 of the public press marked "Signed, James F. Gannon, Director of Revenue and Finance."

MR. MILTON: Objected to as irrelevant and incompetent.

A. I did. Commissioner Gannon called at my office and told me that apparently the tax rate had been made the issue of his campaign and he proposed to answer that and he wanted to know how far I thought he ought to go and I said, "You ought to go the limit, as far as you can go, to simply bat back this issue and drive it out of the campaign if possible." 30

Q. And he did that, didn't he? A. Now, just a minute. In the preparation of this statement 40

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I did not go over them with him other than in a rough way. He told me he was going to prepare his figures, which he did. Now, as to the body of it, I do not know just what it contained other than I read it in the Jersey Journal. Commissioner Gannon handled that entirely himself.

10 Q. You did know, did you not, that in that statement it was stated to the taxpayers "You paid 1917 taxes last December—you pay 1918 taxes this December—and you pay 1919 taxes one-half in April, 1919, and the other half in December, 1919"?

MR. MILTON: Objected to as immaterial, irrelevant and incompetent.

A. Did I read that? I don't know whether I did or not, Counsellor.

20 Q. You knew that statement was there, didn't you? A. I read the thing in general. You see these were pretty busy times. You could not sit down. You could in a general way look at it. The figures were the things that interested me more than anything. As far as the reading matter goes, I don't mind those things.

MR. MILTON: What do you mean by the "figures"?

30 The Witness: The comparisons of the various administrations, as to his. That interested me more than anything.

Q. Yes, but Mayor, you did know these statements were made in that statement, did you not?

MR. MILTON: Objected to as incompetent, irrelevant and immaterial.

A. I did, after—

40 Q. After the advertisement was published? A.

Frank Hague—Direct.

Just a minute. I could not under oath swear that I knew they were there until now that you call my attention to them. I am serious. As I say, when you take Governor Edge's statement—

Q. That probably is true? A. It is probably true, but you get these figures—

Q. You were pretty careful on November 1st to read this advertisement, were you not? A. **10**
No, I cannot say that.

Q. You don't want to put this advertisement and everything that is in there entirely off on Commissioner Gannon, do you? A. The preparation of it, yes; I will have to, and the publishing of it.

Q. And the re-publishing of it? A. Yes, he was absolutely responsible for it.

MR. MILTON: Not in the second publication. **20**
The Campaign Committee saw the value of the document and seized on it.

The Witness: The first one was Commissioner Gannon himself.

Q. On November 1st you read that statement? A. Yes—what one do you refer to?

Q. Page 9 there. A. There was one before this.

Q. Well, I am talking about this one. A. I cannot say that I did read the contents of it. **30**
I would glance over an advertisement and look at it and put it down and then go to another page and see what the opposition were saying. I would be more interested to read the opposition advertisement, and if any set of men attacked me then I would be more apt to read that than I would our own statement. I had confidence in Commissioner Gannon and knew he was capable of answering all attacks.

Q. Now, you do know that it is a fact that the **40**

Frank Hague—Direct.

taxes that were paid in December, 1917, did not pay the taxes for the calendar year 1917, don't you?

MR. MILTON: Objected to as calling for a conclusion and containing an unwarranted assumption of fact.

10 A. Yes, it did pay for it.

Q. The 1917 tax? A. Yes.

Q. Not for the calendar year, January 1st, 1917, to December 31st, 1917?

MR. MILTON: Objected to on the ground it assumes that the State Road tax for the year 1917 hasn't any relation to the fiscal year.

A. I would say they did.

20 Q. I will correct you on that before I get through. You do know that the taxes, that the city's expenses from January 1st, 1917, to November 30th, 1917, were not paid by the tax that was paid in December, 1917? A. Well, you see that is a matter absolutely, wholly and solely in the Department of Revenue and Finance.

Q. No, it is not. I beg to differ with you, because you make up your own appropriation for your own office. A. That is true.

30 Q. I refer to this? A. Yes, that paid for that, yes.

Q. The calendar year? A. Yes.

Q. As a matter of fact, Mayor, don't you know that the taxes that were levied December 20, 1917, paid for the city's expenses— A. The following—

Q. Exactly. December 1st, 1917. A. They have already been paid. How could they pay for the—

40 Q. Until November 30, 1918? A. That is true.

Frank Hague—Direct.

Q. Therefore any taxes, so far as the city purposes are concerned that were paid in December, paid one month in 1917 and eleven months in 1918? A. That is true. I misunderstood your question. I thought you wanted to ascertain whether our expenses were met out of the tax rate. These expenses were for the running of the city.

10

Q. Then the taxes for the calendar year, 1918, to-wit, January 1st, 1918, to December 31st, 1918, are not to be paid by the tax levied in December, 1918?

MR. MILTON: Objected to as calling for a conclusion.

A. Will you explain that more briefly?

Q. Yes. The tax will be levied in 1918, \$17.30, which will become a part of the local expenses?

20

A. Yes.

Q. Now, the local expenses from January 1st, 1918, to December 31st, 1918, are not included in those taxes, all of them? A. No, only from December 1st 1918, to December 31st, 1918. I would say, yes.

Q. Therefore the tax in December does not pay the taxes for the calendar year 1918? A. No.

Q. For city purposes? A. No.

30

Q. The rest of that we will agree with. The 1919 taxes are paid in June and April and December. Commissioner O'Brien has very kindly stated that he would permit me to look into the detailed budget, that I could get him up here on the stand to go over every item if I wanted to, and I want to know if I can have the same privilege in your office? A. Surely. You may come there any time you want to, Counsellor.

40

James F. Gannon, Jr.--Direct.

JAMES F. GANNON, Jr., sworn for the Prosecutors.

DIRECT EXAMINATION BY MR. LANE:

10 Q. Commissioner you were the Director of Revenue and Finance since October, 1917, were you not? A. Yes.

Q. Did you take office immediately? A. The 23rd of October.

Q. Well, since October 23rd, 1917, and you are today? A. I am.

Q. And have been constantly? A. Yes, sir.

20 Q. I understand that Mr. Milton wants to get away for a while, and my reason for calling you to the stand now is to ask you whether or not you will leave in your office available for my inspection the detailed information concerning this budget? A. Now, tell me just exactly what you want me to leave. Are you referring now to my department alone?

Q. No, every department that had anything to do with this thing? A. There are five departments.

Q. Everything referring to State taxes, County taxes and what not that you have? A. Yes, sir; with pleasure.

30 Q. And including particularly the details in relation to the item of \$1,500,000 fixed charges? A. Yes, sir; you can have that also.

Q. And with whom will you leave those? A. Mr. Budd. I have them all here now.

40 Q. Commissioner, will you, between now and the next hearing figure up or have figured up in the Comptroller's office the amount of the tax rate for the fiscal year, December 1st, 1917, to November 30, 1918, for local purposes other than school purposes? A. Do you mean the tax rate

James F. Gannon, Jr.—Direct.

or the amount appropriated for local purposes?

Q. No. In other words, this is what happened: the local rate was \$12.21 last year. Included in that local rate was something like \$664,000, or some such amount, for school purposes. Taking out the school purposes, I want to find out what that rate would be.

MR. MILTON: I think you better do your own figuring, Mr. Lane.

MR. LANE: I will have him figure it right on the stand.

MR. MILTON: You may give him what figures you want him to figure and he will do it on the stand for you.

Q. I am asking you now to prepare you. And also the local rate in the \$17.30 tax for local purposes other than schools? A. Yes.

Q. In other words, I am perfectly frank to say what I am getting at. There is \$9.69 on this rate. That takes out the school proposition and shows other than school purposes? A. Yes.

MR. LANE: Now, we want to adjourn this hearing to the Court House tomorrow morning at 10:30, where I am to appear before Justice Parker, the understanding being with Mr. Milton that I will not attempt to go into any of the city affairs, except so far as it relates to the County and the action of the County Board of Taxation on the city tax and the fixing of the local rate.

(Adjourned until Saturday, November 9th, 1918, at the Hudson County Court House, Jersey City, N. J., at 10:30 o'clock in the forenoon.)

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Joseph McLean--Direct.

Saturday November 9, 1918.

Before:

HERBERT W. KNIGHT,
Supreme Court Commissioner.

APPEARANCES:

10 HARRY LANE, ESQ., and
FRANK J. HIGGINS, ESQ., for the Prosecutors.
EDWARD P. STOUT, ESQ., for the Respondents.

JOSEPH MCLEAN, sworn for the prosecutors.

DIRECT EXAMINATION BY MR. LANE:

Q. Mr. McLean you are the secretary of the Hudson County Board of Taxation? A. Yes, sir.

Q. And have been for how many years? A.
20 Eleven years.

Q. Will you kindly state on what date you received a notice from the City of Jersey City in reference to the budget of this year?

MR. STOUT: Was the budget in writing?

MR. LANE: Yes, annexed to the writ.

MR. STOUT: Would not that be the best evidence?

MR. LANE: I asked him what day he saw
30 it.

MR. STOUT: I will withdraw my objection.

A. It came in the office by messenger; I was not in the office at the time. It is on record here, August 21st.

Q. Yes, and I ask you what did you receive—

A. I received a copy, a certified copy of the annual tax ordinance.

Q. Of the city of Jersey City. A. Of the city of Jersey City.

40 Q. And certified to by the City clerk of Jersey City?

Joseph McLean—Direct.

MR. STOUT: I object to that, it speaks for itself.

MR. LANE: Wait a minute. Mr. Stout, will you stipulate that the copy of the notice annexed to the return is a copy of that notice?

MR. STOUT: Yes, save as to its competency relevancy and materiality. 10

MR. LANE: You don't want me to get the original notice.

MR. STOUT: No.

MR. LANE: In other words, you don't object to the mode of proof?

MR. STOUT: No.

MR. LANE: I offer that certificate in evidence and ask that it be marked.

(Received in evidence and marked Exhibit P-2). 20

(It is stipulated and agreed that the certificate of the Hudson County Board of Taxation annexed to the return is a copy of Exhibit P-2.)

MR. STOUT: I desire to renew my objection as to its materiality and relevancy and competency.

Q. Now, Mr. McLean, on that certificate, this board took some action—the Hudson County Board of Taxation? 30

MR. STOUT: I object to that, the minutes of the Board are the best proof.

Q. Kindly state what action the board took on this certificate? A. The Board ordered it filed on that date at a meeting of the Board on August 21st.

Q. At which time it was ordered filed? A. Yes, sir. "The Secretary reported the receipt of the following budgets which were ordered filed." 40

Joseph McLean—Direct.

MR. STOUT: What are you reading from Mr. McLean?

WITNESS: This is an excerpt from our minutes made for convenience sake of the meeting of the Hudson County Board of Taxation which met at the Court House August 21st, 1918, at 11 a. m.

10 MR. STOUT: Oh, I see.

WITNESS: (Reading) "The Hudson County Board of Taxation met at the Court House August 21st, at 11 A. M.

"Present President Van Deren and Commissioners Rotherham and McGovern.

"The Secretary reported the receipts of the following budgets which were ordered filed.

20 "Jersey City showing the amount to be raised by taxation for 1918 to be \$3,287,368.13."

MR. LANE: I only want what refers to Jersey City.

Q. Now, Mr. McLean what was the next action taken by the Board formally— A. The act of determining the rates.

Q. October 11th? A. Yes, sir.

Q. 1918. A. Yes, sir.

30 Q. And on that day as I understand it there were three sets of resolutions passed by the Board, were there not? A. There were.

MR. LANE: I desire to offer in evidence the resolution passed by the Hudson County Board of Taxation October 11th, 1918, approving the assessment rules for the taxing districts in Hudson County for the year 1918 and the first line of the schedule of valuations annexed to said resolution and forming part of said resolution applying to Jersey City.

40

Joseph McLean—Direct.

(Received in evidence and marked Exhibit P-3).

MR. STOUT: What are you offering a copy?

MR. LANE: I was going to offer a copy.

JUDGE HIGGINS: Offer the original and then you can stipulate.

MR. STOUT: Will Mr. McLean compare it with the original? 10

MR. LANE: He did so.

(It is stipulated that the following is a copy of the resolution referred to and marked Exhibit P-3 and that the following is a copy of the first line of the schedule offered with said Exhibit.)

"RESOLVED, that the books as filed by the Several Taxing Districts of Hudson County as revised under the supervision of this Board, be and the same are hereby approved and declared to be the true assessment rolls for the aforesaid Taxing Districts for the year 1918; the totals of which are set forth in the following schedule: 20

* * * * *

The foregoing resolution was adopted by the following vote:

President Van Deren,
Commissioner Rotherham,
Commissioner McGovern. 30

Districts	Land	Bldg.	Real Estate
Jersey City.	\$105,664,286.	\$138,538,076.	\$244,202,362.
Personal	Total	Railroad	Grand Total
\$54,644,375.	\$298,846,737.	\$59,468,390.	\$358,315,127.

BY MR. STOUT:

Q. Is that so, Mr. McLean? A. Yes, sir.

MR. STOUT: I object to its receipt on the ground of incompetency and immateriality. 40

Joseph McLean—Direct.

But not as to the mode of proof.

BY MR. LANE:

10 MR. LANE: I offer in evidence resolution passed by the Hudson County Board of Taxation on October 11th, 1918 apportioning the state, school and county taxes for the several taxing districts of Hudson County for the year 1918, and the first line of the schedule annexed and included with said resolution referring to Jersey City.

MR. STOUT: Same stipulation and same objection.

(Received in evidence and marked Exhibit P-4).

20 "RESOLVED, that the apportionment of State, School and County Taxes for the several Taxing Districts of Hudson County for the year 1918 be and the same is hereby determined as follows:

The foregoing resolution was adopted by the following vote:

President Van Deren,
Commissioner Rotherham,
Commissioner McGovern.

Districts	Total valuation	Deductions	Increase
		Under Chap. 57	
		and Chap. 188.	Laws 1912.
30 Jersey City	\$358,315,127.	\$42,210,182.	
Net valuations		Apportion-	Apportionment
under which		ment of	of State
apportionment		County Tax.	School Tax.
is made.			
\$316,104,945.		\$1,731,604.32	\$848,546.39.

40 MR. LANE: I offer the resolution adopted by the Hudson County Board of Taxation fixing the tax rates in Hudson County, together with the first line of the Schedule.

Joseph McLean—Direct.

MR. STOUT: For when?

MR. LANE: The schedule says 1918.

(Received in evidence marked Exhibit P-5).

MR. STOUT: The same stipulation and the same objection.

"RESOLVED, that the Municipal, State Road, State School, County and Judicial District Court tax rates in Hudson County to raise the several amounts certified to this Board by the local and County Officials be, and the same are hereby determined as follows: 10

* * * * *

The foregoing Resolution was adopted by the following vote:

President Van Deren,
Commissioner Rotherham,
Commissioner McGovern. 20

Districts.	Municipal Budgets.	Bank Tax.	Net Municipal Tax.	
Jersey City	\$3,287,386.13	\$30,433.74	\$3,256,952.37	
Local Rates.	Apportioned County Tax.	County Rate.	Apportioned State School Tax.	State School Tax.
\$9.09	\$1,731,604.32	\$4.84	\$848,546.39	\$2.37
State Road Tax.		State Road Rate.	Total Rate.	
\$358,315.13		\$1.00	\$17.30	

Q. Now, Mr. McLean, kindly tell me whether or not there was received by the Hudson County Board of Taxation in the year 1917, a tax rate fixed by the Hudson County Board of Taxation on property in Jersey City for the payment of appropriations both county and local for the fiscal year, commencing December 1st, 1917 and ending November 30th, 1918. 30

MR. STOUT: I object, first on the ground, as to its competency, relevancy and materiality; secondly, it calls for a conclusion and 40

Joseph McLean—Direct.

third, that the record of what the county tax Board did is the best evidence.

A. In 1917, the city filed with the county tax board the regular certified copy of the annual tax ordinance.

10 Q. For what? A. Entitled, "An ordinance relating to the taxes for the fiscal year ending November 30th, 1918.

Q. How about the county, is there one received from the county? A. Yes, there is one every year. The certified copy of the county budget showing the amount to be raised by taxation for county purposes.

Q. For what? A. Relating to taxes for the fiscal year 1917-1918.

20 Q. Kindly state, before we get further, the amount of the City budget and the amount of the county budget, which you have just referred to.

MR. STOUT: I make the same objection.

A. Do you want the total amount of the budget or the amount to be raised by taxation?

Q. Total amount of the budget. A. The total amount of the budget for the year ending November 30th, 1918—

30 Q. For Jersey City? A. —is \$5,058,522.93.

Q. What does it include? A. Budget appropriations, local schools, and other appropriations.

Q. Now, what was the amount to be raised by taxes that you have referred to? A. The total amount determined to be raised by taxes is \$4,026,402.60.

40 Q. What does that include, State railroad? A. No, that does not include State Railroad taxes, it is simply the net amount to be raised for local purposes, plus the amount to be raised for school purposes.

Joseph McLean—Direct.

Q. Is that the figure you gave me (indicating).

A. No, this is the one I gave you, which we estimated (indicating).

Q. Can you tell me the amount that was included in that for school purposes? A. The amount for school purposes was \$779,878.

Q. That means the district schools—for the Jersey City local schools, does it? **10**

MR. STOUT: I object to that, it calls for a conclusion.

A. That was the amount to be raised by taxation for school purposes in Jersey City.

BY JUDGE HIGGNS:

Q. Not including any state schools? A. No.

BY MR. LANE:

Q. How about the county, what was the amount of the county Mr. McLean? A. The amount to be raised for county purposes was \$3,317,960.79. **20**

Q. And the total amount of the budget was—
A. The amount of the budget was the same practically as the amount to be raised by taxation because the county has no other income to deduct.

Q. How about the bank tax? Was the amount you have just given me the amount of the budget?

A. The total amount appropriated by the county is \$3,547,335.79. **30**

Q. Now, Mr. McLean, will you kindly state to me the tax rate or the tax levy that became a lien in 1917, the itemized tax rate, the items that go to make up the \$21, on the property in Jersey City.

MR. STOUT: I object on the ground that the record is the best evidence.

A. In Jersey City for 1917, State School Tax rate was \$2.59 county \$5.17, State Road, \$1.00, Municipal \$12.24, Total \$21. **40**

Joseph McLean—Direct.

Q. Now, Mr. McLean can you tell me the amount of the local tax which you said was \$12.24, which was for the local purposes of Jersey City other than the amount to be raised for the local school purposes. A. Separate rates of municipal purposes would be \$9.85, and local school taxes \$2.39 making the total municipal tax, \$12.24.

10 Q. Now, Mr. McLean will you kindly state the amount for the municipal purposes and the local school purposes of Jersey City on this last tax rate. In other words, I want to separate the schools. A. The tax for municipal purposes would be \$5.51 other than schools.

Q. And for schools— A. \$3.58, making a total of \$9.09.

Q. So the tax rate in Jersey City for 1917 for municipal purposes other than schools amounted
20 to \$9.85?

MR. STOUT: Objected to as leading.

A. It amounted to \$9.85, yes.

Q. \$9.85 and the amount in the present tax rate of \$9.09 for municipal purposes other than schools amount to \$5.51. A. Yes.

Q. So that it may be apparent, without the court having to look through the entire record, as I understand it, the tax rate for county purposes
30 for 1917 was \$5.17, and the tax rate for county purposes under this present tax is \$4.84? A. Right.

Q. Now, Mr. McLean, will you kindly state on what valuation in Jersey City the tax rate on this present tax was fixed? What I mean by that is, were they fixed on the valuations of property in Jersey City, taken as of May 20th, 1918 or were they fixed on valuations taken as of October 1st, 1918? A. As of May 20th, 1918. They could not
40 be October 1st, because—

Q. Never mind I don't want that. Now, Mr.

Joseph McLean—Cross.

McLean under what section of the law was the county Board of Taxation acting under?

MR. STOUT: Objected to as calling for a conclusion.

Q. —in fixing this tax rate on property in Jersey City?

MR. STOUT: —and that the witness is not competent to testify. 10

A. Chapter 120 of the laws of 1906.

Q. Mr. McLean, have the assessment rules for Jersey City been finally figured out and sent to the County Board of Taxation. A. They have not

MR. STOUT: Objected to on the ground that the record is the best evidence.

Q. Have you any record showing any confirmation by the County Board of Taxation, of the final assessment rules for Jersey City. A. For 1918? 20

Q. Yes. A. No.

CROSS EXAMINATION BY MR. STOUT:

Q. Mr. McLean, now, in making up these tax rates for Jersey City the County Board of Taxation acted under the same manner as it had in previous years, in making up assessments or tax rates? A. Exactly. 30

Walter O'Mara—Direct.

WALTER O'MARA, sworn for the Prosecutors.

DIRECT EXAMINATION BY MR. LANE:

Q. Mr. O'Mara, you are clerk of the Hudson County Board of Freeholders? A. I am.

Q. And have been for a number of years? A. Yes.

10 Q. Have you with you Mr. O'Mara the resolution adopting the budget for the Hudson County Board of Freeholders or the Hudson County Board of Chosen Freeholders?

MR. STOUT: For when?

MR. LANE: For the period ending December 31st, 1918.

A. I have.

20

MR. LANE: I offer in evidence resolution and ask it be marked and I will incorporate in the record such portions of that resolution and the particular appropriations that I desire to call attention to and will ask leave of the Supreme Court not to incorporate any further portion of the resolution.

MR. STOUT: I object to the form of the offer and also as to its competency and materiality.

30

(It is stipulated and agreed that a copy of the resolution may be used in place of the original, which copy will be received and marked P. 6).

Q. Mr. O'Mara, Exhibit P. 6, being the resolution reads as follows:

"By the Committee on Finance:

"A resolution relating to taxes for the period ending December 31st, 1918.

40 "WHEREAS, This Board is required by law, in ordering each year the amount of money

Walter O'Mara—Direct.

to be raised for county purposes, to declare the amount necessary to be raised for certain classes and sub-classes of expenditures therefore, be it

RESOLVED, By the Board of Chosen Freeholders of the County of Hudson that there shall be assessed, raised by taxation and collected for the period ending December 31st, 1918, the sum of three million, five hundred and forty six thousand, four hundred and ninety three dollars and twenty two cents (\$3,546,493.22) for the purpose of meeting the appropriations set forth in the following statement of resources and appropriations for the period ending December 31, 1918, to wit:

"RESOURCES.

"Surplus Revenues appropriated. None.

MISCELLANEOUS REVENUES.

"From interest on Bank deposits	\$4,000	20
"From State for care of insane and county hospital for board of patients	6,500	
"From State for maintenance of tuberculosis patients and from County Hospital for part maintenance	3,000	
"From Surplus revenues of sheriff	2,000	
"From State for part payment of salary of Court Stenographer and from Probation officer for fines etc.	1,500	30

"\$17,000.00

"Amount to be raised by taxes \$3,546,493.22

"Total Budget Appropriations \$3,576,493.22

"BUDGET APPROPRIATIONS.

SCHEDULE "A".

"Showing the appropriations, the expenditures of which is under the control of the Board of Freeholders. 40

Walter O'Mara—Direct.

	"FIRST: Expenditure for the maintenance of the Court House and County Jail, showing a total of	\$42,900
	"SECOND: Expenditure for county and State Hospital for the insane, showing a total of	66,000
10	"THIRD: Expenditure for the Alms House and Hospital for the Indigent Poor, amounting to ...	61,800
	"FOURTH: Expenditure for the Penitentiary, showing an amount of	30,000
	"FIFTH: Expenditure for the maintenance of the Small Pox Hospital, showing a total of	350
	"SIXTH: Expenditure for store room at county farm, showing a total of	575
20	"SEVENTH: Expenditure for the county stables at the county farm, showing a total of	6,800
	"EIGHTH: For the compensation of the county supervisor, Director and Members of the Board	2,250
30	"NINTH: For the salaries of the officers and employees of the Board, including the offices of the Board, the County Supervisor, the County Collector, the County Physician and the salary of the county map clerk	8,100
	"TENTH: Expenditure for printing, advertising and stationery for the use of the Board and the several departments	8,000
	"ELEVENTH: Expenditure for incidental expenses of a miscellaneous character, not otherwise provided for, showing a total of	15,600
40	"TWELFTH: Expenditure for the maintenance of and repairs to	

Walter O'Mara—Direct.

bridges south of Newark Avenue,
Jersey City, showing a total of .. 2,000

"THIRTEENTH: Expenditure for
the repairs to and maintenance of
bridges north of and including
Newark Avenue, Jersey City, show-
ing a total of 3,900

"FOURTEENTH: Expenditure for
repairs to and maintenance of the
bridges across the Passaic River
(known as West Hudson Bridges)
maintained jointly by Hudson and
Essex counties, showing a total of 10,925 **10**

"FIFTEENTH: Expenditure for
the maintenance of and repairs
to public highways (other than
New Public Road or Boulevard)
showing a total of 14,750

"SIXTEENTH: For the electric
lighting of public highways (other
than New Public Road or Boule-
vard) 1,000 **20**

"SEVENTEENTH: For the pay-
ment of the salaries of the County
Superintendent of Public Works
and the mechanics not attached to
any institution, including the book-
binders at the court house 6,500

"EIGHTEENTH: Expenditure for
Essex-Hudson, Lincoln Highway
and bridges (maintained by Essex
and Hudson Counties Essex being
charged with five eighths and Hud-
son with three eighths of all ex-
penses, the share of Hudson show-
ing a total of 4,100 **30**

"NINETEENTH: For the mainte-
nance of the County Engineering
Department, showing a total of .. 3,800

"TWENTIETH: For the mainte-
nance of the Department of
Weights and Measures, showing a
total of 360 **40**

Walter O'Mara—Direct.

"TWENTY-FIRST: For the burial of honorably discharged soldiers and sailors who die in destitute circumstances, the expenses of decorating their graves, etc. showing a total of 2,650

10 "TWENTY-SECOND: For the necessary supply of coal for the county institutions at the county farm 30,000

"TWENTY-THIRD: For the expenses of the insurance appraisal of county property 5,000

"Making a total for schedule of 325,360"

Q. Mr. O'Mara for what month or period are those appropriations in Schedule A. intended to provide for?

20 MR. STOUT: Objected to, the Records of the Board of Freeholders as the best evidence.

A. For the period ending December 31st 1918.

Q. Take for instance salaries of employees of the Court House eight thousand dollars, on what is that based, a monthly salary? A. Monthly salary, yes.

30 Q. Is that intended to take care of the salaries for the month of December, or I mean, is it for one month, or two months, three months or four months? A. Intended to take care of the salaries for the month of December.

Q. As a matter of fact these appropriations are intended to take care of the various expenses for the month of December? A. Yes, sir.

Q. No question about that? A. No.

40 Q. Now, Mr. O'Mara was the amount \$5,200, for purchase of new horses, harness, wagons other vehicles, supplies, repairs and equipment for county stable? A. Why—

Walter O'Mara—Direct.

MR. STOUT: Same objection.

Q. Is that for one month? A. Yes, for one month for the purchase of horses, automobile truck. You don't purchase them more than every other week or so. That sum was specifically appropriated for the purchase of the automobile truck.

Q. In December? A. Yes, sir. 10

Q. For repairs and equipment for the county State Hospital for the insane \$17,000, is that item intended to be expended in December? A. Of course, my recollection does not go back to last July when I figured these things up, but my answer to that would be "yes."

Q. Was not part of that appropriation intended to be spent before or after? A. It could not be expended before. 20

Q. It could be expended to take care of something. A. The one I have in mind—

Q. I am trying to get the facts. A. I am willing to give the facts, and be perfectly frank with you. For instance you find an appropriation there on page 4, for necessary coal supply for county farm, \$20,000 that is not for the month of December. That is to make up a deficit right up to December. In other words the appropriation ordered was \$42,000, a sum which I thought was ample to take care of the entire place for the entire year, but the way the coal dealers raised their prices, we found out that the appropriation would be exhausted about September, and as a matter of fact it was. I went to the legislature last winter, Mr. Stout knows about it, and I pointed out one or two items to him. He said "We are not going to pass a bill for you, but we will take care of you." When the Legislature sent me a copy of the act they passed to take 30 40

Walter O'Mara—Direct.

care of us and I read it over, and he called me on the 'phone and explained it to me—

Q. You are referring to Section Three, Chapter 238 of the laws of 1918, are you not Mr. O'Mara?

A. Yes.

10 Q. Are there any other items you can call my particular attention to of that same character in Schedule A? A. I cannot say now because I have not gone over the county secretary's books.

Q. Going on with the next Schedule of the budget, Schedule B. showing the appropriation the expenditures of which is *not* controlled by the Board of Freeholders, but which it is obliged to make appropriations, for the use of the outlying boards, commissions and departments, upon their requests.

20

"TWENTY-FOURTH: For the expenses of the Board of Managers of the Hudson County Tuberculosis Hospital and Sanatorium, for the maintenance of these institutions and the Tuberculosis Clinics, including the salaries of all employees 58,000

30

"TWENTY-FIFTH: For the expenditure of the courts of the county, including payment of all necessary salaries 100,000

"TWENTY-SIXTH: For the use of the State Board of Children's Guardians, to be expended for the board, clothing, etc. of dependent children, a charge upon the county of Hudson 50,000

"TWENTY-SEVENTH: For the payment of the fees of Coroners and Morgue Keepers of the county 500

40

"TWENTY-EIGHTH: Expenditure for the county Board of Health and Vital Statistics, including sal-

Walter O'Mara—Direct.

aries of employes and members thereof	1,500	
“TWENTY-NINTH: For the expenses of the County Board of Taxation, including salaries of employes	2,500	
“THIRTIETH: For the maintenance of the Hospital for Contagious Diseases, including salaries of the employes thereof	500	10
“THIRTY-FIRST: For the use of the Boulevard Commission including salaries of members and employes	31,000	
THIRTY-SECOND: For the support and maintenance of epileptic and feeble minded children	2,000	
“THIRTY-THIRD: For the maintenance of county parks	15,000	
“THIRTY-FOURTH: For the expenses of the Mosquito Extermination Commission of the County of Hudson	2,500	20
“THIRTY-FIFTH: For the payment of widows' pensions	5,000	
“THIRTY-SIXTH: For the expenses of the Bacteriological Laboratory of the county including salaries the employes thereof	500	
“Making a total for Schedule “B” of	269,000	30

SCHEDULE “C”.

“Showing the appropriations for the payment of bonded debt, interest and Sinking Fund charges.

“THIRTY-SEVENTH: For the payment of the bonded debt, falling due	996,184.58	
“THIRTY-EIGHTH: For the payment of interest on county bonds .	19,031.35	40

Walter O'Mara—Direct.

"THIRTY-NINTH: For the payment of deficiency in interest on county bonds 5,000.00

"FORTIETH: For the payment of overdraft in Alms House 1906 a/c 28,244.81

"FORTY-FIRST: For the payment of Sinking Fund requirements ... 970,672.58

10

"FORTY-SECOND: Special appropriation for the purchase of site and part of cost of New Hospital for the Insane 600,000.00

"FORTY-THIRD: Special appropriation for the payment of part of the cost of the Improvement of the Newark turnpike 350,000.00

"Making a total for Schedule "C" \$2,969,133.22

20

"An Aggregate or grand total of all appropriations of \$3,563,493.22 and be it further,

"RESOLVED, That the aforesaid amounts above specified and the whole amount thereof, be and the same is hereby ordered raised and appropriated for county purposes, and expenditures for this county for and during the period commencing December 1, 1918, and terminating December 31st, 1918, and that the aforesaid amount of \$3,563,493.22 be and the same is hereby fixed as the limit of expenditure for and during the said period, except as otherwise may be provided by law; and be it further,

30

"RESOLVED, That the aforesaid sum of \$3,543,593.22, less the resources of \$17,000.00 or the net sum of \$3,546,593.22 be and the same is hereby ordered raised by taxation for the period commencing December 1st, 1918, and terminating December 31, 1918 and that the Hudson County Board of Taxation be notified of the action of this Board and a copy of these resolutions be also served upon the last named Board; and be it further,

40

"RESOLVED, That the further sum of Two

Walter O'Mara—Direct.

thousand dollars, (\$2,000.00) be and the same is hereby appropriated to meet the estimated deficiency in the receipts necessary to meet the expenses to December 31st, 1918, of the second judicial District Court of Hudson County; said sum is for the sole use of said Second Judicial District Court and the county Board of Taxation will assess and apportion the share of each of the several municipalities in the said Second Judicial District against said municipalities, according to law. 10

"Dated, July 25th, 1918."

Q. Now, Mr. O'Mara, I notice in Schedule B, the appropriation for the expense of the county tuberculosis hospital and sanitorium is \$58,000, can you tell me whether it was simply for the covering of expenses of December or otherwise?

A. I think they figured it or arrived at it by estimation because of the abnormal conditions of things and the change between the time of the making of the budget—they estimated what the entire thirteen months would cost. 20

Q. By that you mean what? A. The fiscal year and the month of December—thirteen months.

Q. Exactly, and a portion of that would go to make up the deficiency of the fiscal year ending November 30th. A. Yes, some portion of it.

Q. Can you give me in round figures how much the entire amount was for the thirteen months? 30

A. No, I don't want you to put it that way. You want to know what my idea of the amount of the deficiency would be on November 30th?

Q. Yes. A. I cannot say, but judging from the \$58,000 appropriated I figure perhaps it would be fifteen or twenty thousand dollars.

Q. You figure about thirty thousand dollars for a month? A. Yes, sir.

Q. Paragraph 25, expenditure of the courts of the county, including payment of all necessary 40

Walter O'Mara—Direct.

salaries, \$100,000, what is that based on? A. It was based on—

MR. STOUT: I object to the witness testifying except from his own knowledge.

MR. LANE: He made up this budget.

A. It is based on the same general proposition.

10 Q. In other words, it is not based on any theory that the courts would cost the county \$1,200,000 a year? A. No, but a considerable sum just the same. As a matter of fact \$100,000 was my estimate of what would carry the courts through this period, to December 31st, including any deficiency on November 30th.

Q. In figuring that what do you estimate would be the deficiency? A. I cannot tell you that now, I might have last July, but I cannot
20 say now.

Q. Can you tell me what the appropriation in the last year's budget for the county was?

MR. STOUT: Objected to as immaterial and irrelevant.

A. I think it is \$291,000.

Q. Now, for the use of the State Board of Children's Guardians \$50,000 what was that based
30 on? A. Exactly the same proposition, only the current budget was fixed in July 1917. In December 1917, the State Board of Children's Guardians increased the board of children from two to three dollars a week, an increase of fifty per cent, and the only way to make up the fifty per cent increase was to take care of it in that way.

Q. Now, can you tell me how much of that was deficiency? A. No, I can't.

Q. Give me the approximate amount. A. I can
40 only say that the appropriation for board here

Walter O'Mara—Direct.

is what I estimated at that time would be necessary to carry us through to December 31st.

Q. It does not include anything after December 31st? A. Oh, no, oh, no. I decided if there was anything left over it would go in the next budget as "surplus revenue".

Q. Outside of what you stated about the court —There are no other salaries included in that budget except for the month of December. A. No, sir. **10**

Q. December 1918? A. Yes, sir.

Q. In other words you would figure salaries of your office for the month of December and not for November? A. No, not for November, nothing but December.

BY JUDGE HIGGINS:

Q. No November salaries? A. Well, I cannot tell anything much without looking at the County Clerk's book, but salaries are a positive proposition which you can figure on. **20**

Q. Unless you had some deficiency? A. Yes, sir.

BY MR. LANE:

Q. Now on December 31st, "The use of the Boulevard Commission \$31,000.00— A. I cannot answer anything about that I simply took their statement. **30**

Q. What was their statement. A. It included that \$31,000.

Q. Was it itemized? A. Yes, I am sure it was.

Q. You have it in your office? A. I have I think among my budget papers.

Q. To the best of your recollection, was that for the month of December or prior or subsequent? A. The month of December.

Q. You have no objection to my coming to look at it? A. No, certainly not. **40**

Walter O'Mara—Direct.

Q. Now, the 34th item, for the maintenance of county parks, was that for the month of December? A. Yes, sir.

Q. Can you tell me what the appropriation for the entire year was? A. \$137,500.

Q. Now, Mr. O'Mara, coming down to Schedule C, for the payment of the bonded debt, nine hundred and ninety-six thousand and some odd dollars? A. Yes.

Q. What does that include? A. It includes bonds for deficiencies in election, courts, judgment bonds, Fourth St. Bridge, Paterson Plank Road Bridge, Jackson St. Bridge, Paterson Plank Road, Belleville Turn Pike, Additional Tuberculosis Hospital, Penns Neck Bridge, repairs, Assessment, Hudson River Bridge and Tunnel Commission, Emergency Contagious Disease Hospital, that is the recent epidemic, and deficiency bonds.

Q. In other words, these bonds were used to take care of expenses, or moneys expended in the last fiscal year? A. No.

MR. STOUT: Objected to, it calls for a conclusion, the records and bonds are the best evidence of what they were used for.

A. Why, these bonds have been issued covering a period of five or six years, for instance, here is an election bond, I know this bond was issued when the Guerin law was passed, it increased the cost of election more than seventy percent. In August we fixed our appropriation for election for the next year, and the Legislature in the following January passed the Guerin law. We had appropriated seventy thousand dollars, and when this law was passed, it called for the expending of about one hundred and fifty thousand dollars, consequently, the only way was to issue deficiency bonds.

Walter O'Mara—Direct

Q. Take for instance that bond, why wasn't that bond taken care of in the next annual budget for that year? A. The law didn't require it.

Q. The law doesn't require it to be put into this budget?

MR. STOUT: Objected to as calling for a legal conclusion.

10

A. Under the law so framed, it is my understanding that the deficiency fund of the county should be brought up where it should be. It was not long when the Peirson laws were passed, therefore we took advantage of this chapter 238, and reduced the bonded debt of the county to nine hundred, ninety six thousand and some odd dollars.

Q. Now, Mr. O'Mara, for the paying or payment of overdraft in Alms House, that was carried over since 1906? A. Yes, sir.

20

Q. And was likewise cleaned up in this budget? A. Yes, sir.

Q. And the 41st, payment of the sinking fund, \$970,672.58, is that the same thing or is there some distinction. A. The sinking fund necessitating that appropriation was this: we have from 1922 to 1924, \$2,000,000 worth of Boulevard bonds maturing, and in 1925, \$270,000 worth of war renewal bonds expiring. The members of the Board of Freeholders made a sinking fund of some two thousand dollars. I got into it myself later on—and here is a case—the war renewal bonds were issued in 1865 for one million dollars, in 1885 refunded for \$900,000 and in 1905 for \$750,000, and they continued to create a sinking fund of two or three thousand dollars. I figured I would increase it, with the idea of retiring one half and refunding the other half but along

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40

Walter O'Mara—Direct.

came the Pierson laws, that compelled us to bring the sinking fund up to date. This appropriation of \$970,000 was made so that these bonds would be retired at maturity, the boulevard bonds, and the war bonds will be returned to the sinking fund. They total about \$2,000,000. As a matter of fact, there is three million dollars in that budget, two million of which reduced the county debt and another million would have been added to the county debt had it not been appropriated.

Q. As I understand it, the main reason for cleaning up at this time was because of the change in the fiscal year. There will be three tax assessments the revenue of which will only cover a period of twenty five months.

MR. STOUT: I object to that as calling for a conclusion, immaterial and incompetent.

Q. In other words, Mr. O'Mara, the tax levied on December 20th, 1917 was to take care for the appropriation for the fiscal year commencing December 31st, 1917 and ending November 30th, 1918. A. I believe that, yes.

Q. And the tax levied in December of this year will pay the appropriations up to December 31st, 1918?

MR. STOUT: Objected to as calling for a conclusion.

A. Yes.

Q. And the period from January 1st to December 31st, 1919 will be taken care of in the next budget? A. Yes.

MR. STOUT: Objected to as calling for a conclusion.

Q. Now, Mr. O'Mara then as I understand it,

Walter O'Mara—Direct.

so far as the sinking fund requirements are concerned, and figuring it on the basis you say of two million dollars coming due in the next two or three years, this appropriation of \$970,000 being one half or nearly one half— A. It is not one half, it is the necessary sum to bring the sinking fund, up to par.

Q. Being one third or thereabouts. A. It is some fraction, I don't know what. 10

Q. It is practically the annual appropriation for the sinking fund. A. No, it is not. It is much larger than the annual appropriation. It was based on an estimate of the sinking fund commission on an amount to bring the sinking fund up to par.

Q. As a matter of fact it had nothing to do whatever with the payment of the expenses for one month. A. Expenses. This is not a thing that comes under expenses. 20

Q. The sinking fund for one month? A. It had something to do. It is the requirement as figured out by the sinking fund and handed to me to bring up the sinking fund to par.

Q. Is there any reason why it should not be included in the annual tax budget for 1919?

MR. STOUT: Objected to as calling for a conclusion. 30

A. Yes.

Q. Why? A. Too large an amount.

Q. Let us take the forty second item, Mr. O'Mara, the purchase or appropriation for the purchase of site and part of cost of new Hospital for the insane \$600,000 can you explain that to me. please. A. That explains itself.

Q. Was that expenses— A. No, it was intended for the purchase of a site. We have obtained an architect and he is preparing the plans. 40

Walter O'Mara—Direct.

Q. Has the site been purchased? A. No, it has not been determined upon as yet, but it is a part of the expenses of this new institution.

Q. Otherwise would that be taken care of by a bond issue?

10 Q. How about the three hundred and fifty thousand dollar appropriation for the improvement of the Newark Turnpike? A. That is to pay that improvement which has been underway for some time. We have previously issued two hundred and fifty thousand dollars in bonds and we are making an appropriation of three hundred and fifty thousand dollars and we hope to get the balance from the state, but their promises are not always good.

20 Q. Then you expect to pay one half, Mr. O'Mara approximately of the expense of this improvement in this budget? A. Oh, no, no, we expect to pay—in other words, we have contracted and obliged that sum of money, but we don't expect to pay it in that month, the law doesn't require it in that one month.

Adjourned to Monday November 11th, 1918,
at the City Hall, at the office of the City
Counsel, Jersey City N. J. at ten o'clock.

30

Jersey City, N. J.

Monday, November 11th, 1918.

Before—HERBERT W. KNIGHT, Supreme Court
Commissioner.

A P P E A R A N C E S :

HARRY LANE, Esq., for the Prosecutor.

THOMAS BROGAN, Esq., for the Respondents.

40 MR. LANE: Commissioner Gannon was to appear here this morning for further examination, but I cannot seem to locate him.

Samuel Garrison—Direct.

Owing to the fact that Mayor Hague declared "Victory Day" a legal holiday for the City of Jersey City, the further taking of depositions was adjourned to Wednesday at the same time and place, at which time all the commissioners will be present or available.

HERBERT W. KNIGHT,
Supreme Court Comr. of New Jersey. 10

Jersey City, N. J.,
Wednesday, November 13th, 1918.
Before—HERBERT W. KNIGHT, Supreme Court
Commissioner.

APPEARANCES :

HARRY LANE, Esq., for the Prosecutor.
JOHN MILTON, Esq., for the Respondents. 20

(Case resumed pursuant to adjournment.)

SAMUEL GARRISON, sworn for the Prosecutors.

DIRECT EXAMINATION BY MR. LANE:

Q. Mr. Garrison, you are one of the prosecutors, and Irma B. Garrison is your wife? A. Yes, sir.

Q. And she and you own jointly the property known as 91 Kensington Avenue, Jersey City? A. Yes, sir. 30

Q. Mr. Garrison, as soon as you learned of this rate of \$17.30, what did you do? A. Well, there were a number of property holders came to me, and I represented the facts to them, after I had investigated and found out what it was, and when they learned it they were indignant, and wanted to know what they could do about it— 40

Samuel Garrison—Cross.

MR. MILTON: I move that be stricken out.

MR. LANE: Let him finish his answer.

Witness: These property holders came to me and as soon as I found out what it was for, we immediately called a meeting to protest these taxes.

10 Q. Yes, and that meeting was called for on October 29th, the evening of October 29th, was it not? A. I believe so.

Q. Now, Mr. Garrison, what did you learn about these taxes? A. My attention was first called to it when it appeared in the Jersey Journal, on a day sometime prior, maybe a week or two before the twenty-ninth.

MR. LANE: That is all.

20 CROSS-EXAMINATION BY MR. MILTON:

Q. Mr. Garrison, you are in the real estate business? A. Yes, sir.

Q. And have been for a good many years in Jersey City? A. Yes, sir.

Q. You were active in the campaign, political campaign in 1916, which resulted in the election of James F. Gannon? A. No, sir.

30 Q. You were a supporter of Mr. Warren, the opponent of Mr. Gannon? A. Not politically, personally, yes.

Q. You voted for him? A. Yes, sir.

Q. And worked for him? A. No, sir.

Q. You are willing to admit that the so-called budget was advertised in the newspapers in July or August of this year? A. No, sir.

Q. Did you ever see it published? A. No, sir.

40 Q. It is a fact that your interest in the budget and tax rate was aroused contemporaneously with the existence of the political campaign for the

Samuel Garrison—Cross.

election of assembly candidates and county supervisor? A. Absolutely not.

Q. What I mean by that is this: The campaign for the county supervisor and assembly candidates was in force when your attention was called to the ad.? A. It was in force, but had no connection whatever to it; it was not brought to me by politicians; it was brought in to me by home-seekers who are not politicians.

10

MR. MILTON: I move to strike out the answer as not responsive.

Q. What I am getting at is the relation of the two events. You say this ad. of the County Board of Taxation was drawn to your attention shortly before October 29th; what was the date?

A. It was about the eleventh or twelfth.

Q. Of October? A. Yes, sir.

20

Q. And within a few days after, the property holders came to see you about it? A. Yes, sir.

Q. Who were the property holders? Frank Gormley? A. Frank Gormley? No, sir; I have not seen him before or after election.

Q. Who were the property holders?

MR. LANE: I object on the ground that it is incompetent, irrelevant and immaterial.

A. I would be glad to give them so far as I am concerned. John Bushfield, John McDonald, David Platt, and Margaret Wheelehan.

30

Q. Did they come to you or did you go to them?

A. Three of them came to me and I went to see the other one.

Q. Which one? A. Margaret Wheelehan.

Q. You collect rents for these persons? A. Of the three who came to see me, but not the one whom I went to see.

Q. What was your purpose in going to see her?

40

Samuel Garrison—Cross.

A. To get some money to help defray the expenses in case we needed it.

Q. When was that? A. Immediately after the meeting was called.

Q. After it was held? A. Yes, sir.

Q. This meeting was held October 29th? A. Yes, sir.

10 Q. And at that time the newspapers were filled with various advertisements of politician candidates and contained all sorts of charges with reference to this budget and taxes? A. Yes, sir.

Q. In fact, I think either you or your father announced that the meeting held in your office was not a political meeting? A. Absolutely.

20 Q. Of course that statement was not rendered necessary by the fact that a number of politicians appeared at the meeting? A. Mr. Gormley appeared that night and asked to be allowed to speak and I requested him not to speak because I wanted to keep the politicians out and I threatened to close the meeting if any politicians tried to speak, and I called attention to the fact that no candidates for office—I passed a resolution stating that no candidates for office would be allowed to speak, and it was passed. Mr. Baird was there and—

30 Q. Mr. Baird was a Republican candidate for Congress? A. Yes, sir.

Q. Between October 11th, when your attention was called—first drawn to the supposed tax rate, and October 29th, when the meeting was held in your office, what else did you do in reference to these tax rates, or budget? A. What else?

Q. Yes. A. Nothing.

Q. Did you consult any attorney between October 11th and October 29th? A. Yes, sir.

40 Q. Between those dates? A. Yes, sir.

Samuel Garrison—Re-Direct.

Q. Who was that? A. Frank J. Higgins.

Q. You said that your attention was called to an ad. of the County Board of Taxation? A. Yes, sir.

Q. How soon after your attention was called to that ad. of the County Board of Taxation was it that you consulted an attorney? A. About five or seven days after.

10

Q. You, I assume, take active interest in the affairs of Jersey City? A. Not politically.

Q. I don't mean politically? A. Yes, sir.

Q. And keep in touch with the developments of the city affairs as they are published in the local press from time to time? A. Just as I happen to read it.

Q. You purchase the Jersey Journal every day? A. Yes, sir.

Q. And read its columns? A. Oh, yes.

20

Q. Did you ever observe in the columns of the Jersey Journal since July, 1918, any reference to the budget and so-called tax of \$17.30? A. No, sir. You mean prior to October 11th?

Q. Prior to the time when your attention was called to it? A. No, sir.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. Mr. Garrison, I show you a copy of the taxing ordinance and budget which is headed "An Ordinance relating to taxes for the fiscal year ending the 31st day of December, 1918", and I will ask you first whether you saw the publication of that in the newspaper?

30

MR. MILTON: Objected to on the ground it is leading.

A. No, sir.

Q. And I ask you next, as to whether there is

40

James F. Gannon—Direct

anything in that budget or in that notice which called to your attention that it was a budget for local purposes in Jersey City for the month of December only?

10 MR. MILTON: I object, first, on the ground that it calls for a conclusion; second, on the ground that the paper is the best evidence and speaks for itself, and, thirdly, on the ground that the paper is not in evidence, and he cannot examine the witness on a paper not in evidence.

MR. LANE: I will enlighten Mr. Milton to the fact that the paper is annexed to the writ. I withdraw the question.

MR. LANE: That is all.

20 JAMES F. GANNON, recalled for the Prosecutors.

DIRECT EXAMINATION BY MR. LANE:

Witness: I would like to preface my testimony Mr. Lane by asking if every courtesy has been extended to you from my department in getting the information you desired?

MR. LANE: I will say it was.

30 Q. Mr. Gannon, I assume you are the James F. Gannon whose name is signed to the notice in the newspaper which appeared in the Jersey Journal on November first and second. A. You mean that article headed "When the Jersey Journal tells the truth"?

Q. Yes, sir. A. Yes, sir.

Q. Your particular attention is called to the portion of this ad. which refers to the taxpayers of Jersey City—to the following statement: "The
40 only taxes you have to pay is regular taxes you

James F. Gannon—Direct

have always paid on December 20th, and your taxes are lower than ever, \$17.30 this year instead of \$21 last year," did you authorize that statement. A. I did, sir.

Q. Will you kindly state to me whether or not the tax which is levied, \$17.30, is the regular tax in all particulars the same as was levied in December 1917?

10

MR. MILTON: I object on the ground it calls for a conclusion, and that the budgets of the two years are the best evidence of what taxes were, as well as the records of the county tax board.

A. I might say they did differ only in one respect, and that is this: The rate of \$17.30 included only a sufficient amount for salaries and current expenses of the city for a period of one month; in all other respects is the same; it contains one year's appropriation for state road purposes, for school purposes and local Board of Taxation.

20

Q. It does not include one whole year for county purposes, does it? A. It does not, it includes \$1,763,604.32, which was put into the budget by the county tax board, and which represents Jersey City's share of the county tax, the whole county tax being over three million dollars.

30

Q. And the county tax for the same period as for the local tax?

MR. MILTON: Objected to as calling for a conclusion.

A. I assume so.

Q. How much is there in this present tax budget for local purposes in Jersey City? A. About \$449,000.

40

Q. And at the same proportion for the addi-

James F. Gannon—Direct

tional eleven months it would amount to in the neighborhood of \$4,900,000, wouldn't it?

MR. MILTON: I object to that, as incompetent, immaterial and irrelevant.

A. I have not calculated it.

Q. Will you calculate it? A. Yes, sir.

10 Q. Have you calculated it? A. Yes, sir; \$4,939,000. additional would be required on the basis of the same rate, to run the city, for local purposes, for the additional eleven months.

Q. Now, Commissioner, under the part I have last read, in this same article, you said "You paid 1917 taxes last December, you pay 1918 taxes this December and you pay 1919 taxes, one half in June 1919, and the other half in December 1919." A. That is correct, I said that.

20 Q. As a matter of fact in December 1917, the people of Jersey City paid the taxes for the fiscal year ending November 30th, 1918?

MR. MILTON: I object to that on the ground it calls for a conclusion, and upon the ground it is based on an unwarranted assumption of facts, namely in the tax assessments for 1917, there was included not only the expenses for the running of the City from December 1st, 1917 to November 30th, 1918, but there was also included in that tax, an amount necessary to meet the obligation imposed by the so called "Edge State Road Tax" which is an annual tax and the amount necessary to meet the obligation imposed by the school act requiring an assessment in the proportion of two and three quarter mills on every dollar of property, for state schools, and the amount necessary to meet the City's share of the cost of the County Government for the

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40

James F. Gannon—Direct

County's fiscal year ending, as I understand it, November 30th, 1918, and the amount necessary to meet the appropriation made by the Board of School Estimates for the running of schools for the school fiscal year which ended June 30th, 1918.

A. That statement or question is not entirely clear or correct. 10

Q. Is it correct so far as the tax for the local expenses of the City of Jersey City is concerned?

A. It is.

Q. It is correct so far as the taxes for the county expenses is concerned? A. It is.

Q. Now, Commissioner, can you tell me what the approximate total valuation of Jersey City is on which this \$17.30 tax is based?

MR. MILTON: Objected to as immaterial and irrelevant. 20

A. \$358,315,127 which includes the second class railroad property.

Q. And, Commissioner, in order to raise the \$449,000 for local purposes, which was based on the same figure as the local purposes in this budget, for December 1918, it would be necessary to have added an additional tax of from ten to fifteen cents on the dollar would it not? 30

In other words, I want to know the amount of the tax rate which would be necessary to raise the \$4,939,000, which was the figure for the eleven months, based on the same figure as for December.

MR. MILTON: Objected to on the ground that it is immaterial, irrelevant and incompetent.

A. I would have to calculate that also, Mr. Lane. 40

James F. Gannon—Direct

Q. Will you calculate it right now? A. I will try to.

Q. Have you concluded? A. Yes, sir; approximately fourteen dollars per thousand additional, a little less.

10 Q. And therefore, Commissioner, acting on that basis, that the appropriations were for the entire eleven months addition, up to November 30th, 1919, there would be an additional tax added of fourteen dollars to the \$17.30?

MR. MILTON: Objected to on the ground that it is immaterial, irrelevant, and incompetent, and calls for a conclusion.

A. That is about correct.

20 Q. And of course, for the county tax, for the entire year to November 30th, 1919, or an additional eleven months, there would also be something added?

MR. MILTON: Objected to for the same reason.

A. I assume so.

Q. Commissioner, can you tell me the total increase of valuations in Jersey City this year over last year? A. About thirty-two million dollars.

30 Q. Therefore, Commissioner, as a matter of fact, the statement in this notice to the taxpayers, "Your taxes are lower because the railroads and the big corporations are now paying as they never paid before," that is not absolutely correct?

MR. MILTON: That is objected to on the ground it is irrelevant and immaterial and incompetent and calls for a conclusion.

A. Yes, it is quite correct.

40 Q. As a matter of fact, the reason the tax is

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lower is because this fourteen dollars, or some other figure which represents the additional eleven months, is not added in, isn't it? A. That is not correct, but the statement is correct because we have \$32,000,000 more in ratables through the efficiency and competency of the tax department.

Q. It is also a fact the taxes are lower because the eleven months are taken out? 10

MR. MILTON: I make the same objection.

A. I do not think that is so.

Q. Do you mean to say if you had in the appropriations, the amount for the additional eleven months, the taxes would not be higher? A. Certainly they would.

Q. And in the regular taxes that were paid in December 1917, these eleven months, or the eleven months of the preceding year were included in these taxes, were they not? 20

MR. MILTON: I make the same objection.

A. They are regular, nothing irregular, nothing special, nothing exceptional about them.

Q. The distinction is the eleven months is not included in this tax that was included in the other tax? 30

MR. MILTON: I make the same objection.

A. I think that distinction is quite right.

Q. The same applies to the county? A. I don't know anything about the county.

Q. You supervise the entire taxing system for the City of Jersey City, do you not? A. I do.

Q. And the entire tax rate in Jersey City, which includes the county? A. Yes, sir; but the county rate is arbitrarily added by the County 40

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Tax Board and I have nothing to do with making that up, the Board of Freeholders do that.

Q. If the county had included in that the eleven months, ending November 30th, 1919, you would not have allowed that to be included in the tax rate of Jersey City? A. I have no personal knowledge of the amount as in the county budget.

10 Q. You know it only includes to the 31st of December, 1918? A. I do not know from personal knowledge; I assume so. I assume they made up their budget in the same manner we made ours up in accordance with the Pierson Act.

Q. As a matter of fact you examined that, didn't you, to see that it did not include anything improper? A. No, I have not, Mr. Lane; such an examination would not benefit me at all, because the rate is arbitrarily put in by the tax board and if it was absolutely wrong I would have nothing to say about it.

20 Q. Have you the detailed budget for all the disbursements? A. I have, sir. What item do you want to first refer to?

Q. You produce the detailed budgets for the five different departments of Jersey City together with a recapitulation? A. Yes, sir.

30 Q. Is that right? A. Yes, sir.

MR. LANE: I will at this time offer in evidence the detailed budget covering the revised tax rate of Jersey City. I will incorporate in the minutes only such portions as I refer to in the testimony. I will make application to the Supreme Court not to be required to include in the record and have typewritten for the Court the entire detailed budget. I will ask the city to have, at the time of the argument, the detailed budget in

40

James F. Gannon—Direct

open court for inspection by the Court, if it desires it or for such direction as the Court may, at that time, make.

MR. MILTON: Counsel for the city desires to state on the record that we will object to putting in the Minutes of only a portion of the budget, either the whole budget should be submitted or none of it. Counsel for the city, of course, will do everything to facilitate matters. 10

(Detailed budget above referred to marked P. 7.)

MR. LANE: As I understand it the city will not permit this original budget to go out of their possession.

MR. MILTON: Certainly not, but the Commissioner is entirely welcome to come to the city offices and use the tabulating machines of the city. 20

Q. Commissioner, what parts of that budget did you have anything to do with; what parts did you make up? A. I had more to do with the making up of the figures pertaining to my own department and debt service than anything else.

Q. Did you have anything to do with any other parts? A. General supervision of the other parts as they were submitted. 30

Q. Now, Commissioner, you have in that budget under "debt service" an item of a million and five hundred thousand of dollars. A. One million four hundred and forty-one thousand.

Q. Will you let me see the detailed budget for that? A. Yes, sir.

Q. There is here seventy-four thousand three hundred and twenty-one dollars and twelve cents for temporary loan bonds. 40

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MR. MILTON: The same objection.

Q. Is that right? A. That is correct, and in that \$74,328.12 is included loan bonds of \$329,000 to pay for police and fire salary increases from the time the increase went into effect last March down to November 30, 1918.

10 Q. Will you kindly state in addition to the police and fire increases that you have mentioned which took place in 1918 how much is for temporary loan bonds issued after December 1st, 1918? A. Do you want me to itemize them?

Q. Yes, you might. A.

Bond No.12. Drugs, medicine and surgical supplies in the Main Hospital issued March 18, 1918, \$8,000.00

20 Q. Give me just the bond number and the date. A. No, I insist on giving what they are for.

Q. All I want, Commissioner, at this time is the bond number, the date and the amount.

A.

Bond No. 13. Judgment of H. K. Borst, March 18, 1918 \$540.00

Bond No. 18. Advertising Tax Sale No. 57, May 7, 1918, 5,500.00

30 Bond No. 19. War Emergency Fund, May 27, 1918, \$5,000.00

Bond No. 20. Awarded damages to F. Wagner, same date, 1,250.00

Bond No. 21. Deficit in appropriation, Board of Education, 1915, and provision dated June 18, 1918, 36,000.00

Bond No. 22. Equipment Home Defense League, June 18, 1918 6,000.00

40 Bond No. 23. War Emergency Fund, July 8, 1918, 10,000.00

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Bond No. 24. New Labor Bureau Headquarters, Expenses, August 1, 1918,	1,458.33	
Bond No. 14. War Emergency Fund, March 18, 1918,	5,000.00	
Bond No. 15. Supplies, Isolation Hospital, same date,	31,000.00	
Bond No. 16. Drugs, medicine and supplies, Main Hospital, same date,	10,000.00	10
Bond No. 17. Judgment against Board of Education, April 17, 1918,	16,067.84	

and other bonds, numbers 7, 1, 2, 3, 4, 5 and 6, aggregating \$329,000 were for police and fire salary increases from the time of the adoption last March by resolution of the City Commission to November 30, 1918. These bonds were all dated September 19, 1918. 20

Q. Commissioner, there are a number of bonds issued in 1917; will you kindly tell me the total amount? A. I would have to calculate that, Mr. Lane.

Q. Those issued from December 1st, 1916, to November 30, 1917? A. \$151,362.07.

Q. Calculate amount of temporary loan bonds from December 1st, 1915, to November 30th, 1916. A. \$58,144.38. 30

Q. Now, Commissioner, I see that there are a large number of these bonds that were not put in the last tax levy, to wit, all bonds prior to December 19th, 1917; will you kindly state why they were not put in that budget?

MR. MILTON: Objected to on the ground that it is irrelevant and calls for a conclusion. 40

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Witness: In the first place I had nothing to do with the making up of that budget. In the second place I do not see any large number of bonds you appear to refer to.

MR. LANE: Strike the question out.

10 Q. I see in bond No. 7, expenses of Zone Commission, issued September 20, 1917, \$10,000? A. I did not assume office until October, 1917.

Q. You cannot give me any particulars? A. I can only say in 1916 or seventeen an Act of the Legislature was passed allowing cities, like Jersey City, a Zoning Commission and appropriating a sum not exceeding \$10,000, and such an appropriation was made by Commissioner Brensinger just before he died and the Zoning Commission still has a substantial balance of that \$10,000
20 left which will be carried into surplus revenue when the next budget is made up.

Q. Do you know anything about bond No. 1578, advertising Jersey City, dated January 15, 1917, \$20,000? A. The only thing I know about that transaction is that the \$20,000 is still in the city treasury, never having been used and will be carried into surplus revenue next year.

Q. Can you tell why that bond is now being paid out of the taxes of Jersey City instead of
30 having \$20,000 applied to the payment of that bond? A. Because the bond itself must, of necessity, according to law, be taken up in the next budget, after its issuance.

Q. As a matter of fact, that \$20,000 will then become available for city purposes? A. That \$20,000 will be carried into surplus revenue and become available for general purposes, or in all probability be reappropriated, because the City of Jersey City intends spending money as soon as
40 the war is over to advertise Jersey City.

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Q. Now, there is a bond, January 5, 1917, No. 1579, for \$25,000 second class railroad appraisal?

A. Yes.

Q. That second class railroad appraisal was made when? A. That was made—

Q. Approximately. A. —pretty much all during the year 1917. That appropriation is pretty well expended. We needed all that appropriation in order to go into Court to fight the valuation placed by the State upon all second class railroad property. That litigation resulted in our getting about \$2,500,000 more in ratables, netting the city about \$50,000 more in income. 10

Q. Can you tell why that bond was not put in the last tax levy, I mean the 1917 tax levy? A. I cannot.

Q. Now, Commissioner, as a matter of fact, you talked over this budget with the other commissioners of Jersey City? A. I did. 20

Q. In reference to this debt service as well as the particulars? A. Yes, sir.

Q. And, as a matter of fact, Commissioner, wasn't it determined to put all of these bonds into this particular tax levy because there was an opportunity for the City to receive three tax levies, or the proceeds from three tax levies covering a period of only twenty-five months, for city purposes,—to wit, from December 1, 1917 to December 31, 1919? 30

MR. MILTON: Objected to on the ground that it is incompetent, irrelevant and immaterial.

MR. LANE: I am asking him what that transaction is based on.

MR. MILTON: Objected to as incompetent.

A. The question is very misleading, it does not state what actually transpired at all. All tempo- 40

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10 rary loan bonds issued previous to the adoption of this budget I insisted on putting in this budget. Nobody else is responsible for that but me. I consider I would be violating the law if I followed the practice that has been in effect for so many years past in leaving temporary loan bonds out of the next tax levy when the law says it ought to go in.

Q. As a matter of fact, none of these temporary loan bonds included in this \$674,328.12 were issued before July 26, 1916, were they? A. No, sir.

20 Q. Commissioner, at least two of your associate Commissioners, Mayor Hague and Commissioner Moore, were members of the commission during that entire term? A. They were, during that entire term, Commissioners of Jersey City. As a matter of fact in the making up of these budgets the Director of Revenue and Finance takes entire charge of debt services, inasmuch as that involves to a certain extent questions of law and the other Commissioners follow the practice of adopting his suggestion the same as he follows the practice of adopting their suggestions for anything within reason that they ask for, when they ask for a certain amount of appropriation to run their department.

30 Q. You don't mean to say this item of \$1,400,000 was put in there with the active acquiescence and scrutiny of your fellow commissioners? A. It was put in there with more than their acquiescence, it was put in there after a scrutiny of the facts and the amount having been computed by me and voted for by them upon my recommendation.

4 Q. As I understand it, Commissioner, you seized upon this opportunity to satisfy this \$1,400,000, worth of bonds, did you?

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MR. MILTON: Objected to as irrelevant and incompetent and calling for a conclusion. It is objected to on the further ground that the inclusion of temporary loan bonds in the budget is an act of discretion not inquirable into in the proceeding at issue.

A. I did not seize upon anything. I acted in accordance with certain financial principles, using my best discretion and putting all of the previously issued temporary debt bonds in this budget, which was the first budget made up since I have been in public office as Director of Revenue and Finance. 10

Q. Do you know why those temporary loan bonds, prior to the making up of the preceding budget, were not put in? A. I do not, sir, at that time I was practicing law. 20

Q. Now, Commissioner, I show you under item of interest on funded debt, that you included interest due January 1, 1919 on temporary loan bonds, \$25,000, and I also notice that there is in lead pencil "Est" can you explain that? A. Yes, the lead pencil was for my own guidance to testify at this inquiry, the item you refer to and the amount of \$25,000, alongside the item was the amount estimated by me required to pay on January 1, 1919 to pay the interest on outstanding temporary loan bonds without which provision Jersey City would have defaulted in the payment of interest. 30

Q. Don't you know as soon as the budget of January 1, 1919 was made up immediately loan bonds can be made—

MR. MILTON: Objected to on the ground it calls for a conclusion.

A. That budget will not be made up, accord- 40

James F. Gannon—Direct

ing to my construction of the Pierson Act, until January 1st, 1919. The money must be available for use on the first day of January 1919. Interest is payable in January and July, we pay it in six month periods.

Q. Is that for a six month period interest? A. No, that is for the period corresponding with the
10 maturity of the bond.

Q. Exactly, and it might be for a considerable period. A. I would have to examine each bond separately.

Q. Are there any of considerable period? A. I do not think there are any for more than six months.

Q. Was the interest on all bonds paid on July 1st? A. July 1st and January first. We sometimes redeem the bonds and pay the interest up
20 to the date of its redemption.

Q. Will you state whether the interest figured in this temporary loan bond account is on any other bonds in addition to the temporary loan bonds that appear in the \$674,000 item? A. No other bonds.

Q. As a matter of fact, the interest on all of these bonds, since their issuance was taken into consideration in making that estimate? A. No, sir.

Q. Which ones were not? A. I cannot say that, I would have to figure out each bond separately. That was done at the time I made up this estimate.
30

Q. All these bonds issued will become due on a certain date? A. Every bond has a date of maturity. We generally provide in these bonds for the redemption by the city, by paying interest to the date of maturity.

Q. Do all of these bonds bear the same date of maturity? A. They do not.
40

James F. Gannon—Direct

Q. Can you state the date of maturity of the various bonds? A. I cannot.

Q. How long are they made to run as a rule? A. Within the year.

Q. Commissioner, bonds issued on March 18th, 1918, would not become due until March 18th, 1919, unless sooner redeemed by the city? A. No, but the interest for these bonds would come due sooner than that. 10

Q. Why? A. Because we make arrangements for the payment of interest in January and July.

Q. But the interest would not be due and payable before January 1st, 1919? A. Some bonds are demand bonds.

Q. Has there been any bonds redeemed by the city of these temporary loan bonds? A. No, sir. 20

Q. And therefore, is there any reason why the city's financial condition would be disrupted if these temporary loan bonds were not paid on January 1st? A. The City's finances would be disrupted if interest on these obligations were not paid according to their tenure on January 1st, 1919.

Q. And, Commissioner, the larger portion of these bonds, or at least \$450,000 worth of these bonds will not become due until some date subsequent to March 1919, and a large amount of them until September, 1919? 30

MR. MILTON: Objected to on the ground it is immaterial, irrelevant and incompetent, and on the further ground that the face of the bonds is the best evidence.

MR. LANE: I will ask Mr. Gannon to get these bonds.

MR. GANNON: They are in the bank. 40

James F. Gannon—Direct

Q. I will ask for a record of them. A. I will ask counsel in calculating your figure, you included the \$329,000 in bonds for the payment of fire departments?

Q. Yes, sir; I took all the bonds after March 1st, 1918. A. You mentioned a figure of \$450,000?

Q. Yes, sir. A. In mentioning that figure you had in mind the \$329,000 in police and fire bonds?

Q. Yes, sir. A. You are entirely inaccurate in your assumption they will become due later than January first 1919, as a matter of fact the maturity of these bonds is December 31st, 1918, by force of the statute authorizing the City Commission who put these increases into effect, and to issue bonds for the payment of the same, Chapter 142 of the laws of 1918.

Q. Commissioner, you are referring to Chapter 142 of the laws of 1918, and I call your attention to the provision of that act which provides that provision shall be made for the retirement or payment of such bonds in the annual budget of said city adopted next after the issuance of said bonds. I now ask you whether or not you have adopted the next annual budget after the issuance of these bonds?

MR. MILTON: I object on the ground it calls for a conclusion.

A. Yes, these bonds were issued in March, 1918, and the next budget adopted after the issuance of these bonds was the budget just made up and in which the bonds are included.

Q. The next annual budget? A. Yes, sir.

Q. And when you adopted that budget did you have in mind the annual budget?

MR. MILTON: I object on the ground it calls for a conclusion.

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A. Only with the exception of salaries and claims of Jersey City in all departments for one month.

Q. Commissioner, for local purposes of Jersey City, when you voted for that resolution, you voted for the annual budget? A. I was voting for the annual budget in every respect except for local purposes, for salaries and claims of Jersey City for one month. 10

Q. Therefore, with the exception of salaries and claims you were voting for one month? A. Yes, sir.

Q. You are making appropriations for one month? A. Yes, sir; excepting in the respect I have qualified my answer.

Q. Now, Commissioner, I notice another item of interest, January 1st, 1919, temporary improvement bonds, and in that you have an item of \$25,000, will you kindly state what that interest is based on? A. That interest is an estimate of the amount needed on January 1, 1919, to pay the interest on temporary improvement bonds and interest on obligations of Jersey City which were issued for various improvements such as the City Hospital, the Lincoln High School, and for public schools, and buildings. 20

Q. Was any of that interest due prior to July 1, 1918? A. No, sir. 30

Q. Positive? A. Yes, sir.

Q. Commissioner, I notice from your record, that the due date on the police and fire salary bonds is December 31, 1918, is that accurate? A. That is correct and I have so stated in my previous testimony.

Q. And you have included these bonds in this budget the same as if it was a regular annual budget of Jersey City? A. I have. 40

Q. Now, will you kindly give me the due date

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of bond No. 14 War Emergency Fund? A. December 31, 1918.

Q. And the interest dates I notice are from March 27, 1918; is that right? A. The date of the issuance of the bond with interest payable January 1 and July 1, unless sooner redeemed by the city.

10 Q. Bond No. 15 supplies, Isolation Hospital, the due date is also December 31, 1918, is that correct? A. It is.

Q. Turn now to bond No. 1, the first one that appears, the judgment of S. Pizzuti issued on June 18, 1917 for \$1,184.19, tell me what the due date was? A. The same date as appears on bond No. 2 for \$1,184.19.

Q. Bond No. 3 for \$2,807.71, is that correct? A. That is correct.

20 Q. Now, Commissioner, I notice you have provided for the payment of these three last mentioned bonds becoming due December 31, 1917 in this budget, did it affect the financial condition of Jersey City that these bonds were not paid on December 31, 1917?

MR. MILTON: Objected to on the ground it appears on the face of the bond.

30 Q. It would have affected the finances of Jersey City if we had not made provision in this budget for the payment of the interest of these obligations for January 1, 1919? A. If no provision had been made on maturity for their renewal and the city had defaulted it would have seriously affected the financial condition.

Q. For one month? A. I do not consider it good financing to renew temporary loan bonds, and for that reason used my sound discretion in
40 putting these items aggregating about \$4,500 in this budget.

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Q. And for the same reason you put in the items aggregating \$674,000 in this budget? A. I have answered that question.

Q. You did it for the same reason?

MR. MILTON: I object to that.

A. Refer to my previous answer.

Q. Because you thought it was good financing not to renew these bonds you included them in this budget? 10

MR. MILTON: I object on the ground it calls for a conclusion of law and fact and on the further ground it is immaterial, irrelevant and incompetent and on the further ground that bonds of this character is a matter calling for the exercise and discretion of the Commissioner and on the further ground it does not appear there is any power or authority in the City of Jersey City to renew these bonds. 20

A. We considered it good business and financial judgment to include these bonds in this tax levy so that this temporary indebtedness would be discharged, and I know of no provision in law for the renewal of them.

Q. Commissioner, the temporary loan bonds have been renewed from year to year in Jersey City, have they not? 30

MR. MILTON: I object on the ground it is immaterial and incompetent.

A. I cannot answer that question because I have only been Director of Revenue and Finance since October and I can state there have been no such temporary obligations renewed.

Q. Because there have been no budgets adopted since this one budget? A. It is a fact no budgets have been adopted since this one budget. 40

James F. Gannon—Direct

Q. I notice here bond No. 27, give me the date, the due date of that bond; new hose, fire department? A. October 28, 1917.

Q. Has that bond been renewed? A. No, sir.

Q. Has the city defaulted? A. It remains outstanding as an overdue bond, the holder of the bond not having demanded payment.

10 Q. Also bond No. 28, new hose, fire department? A. Yes, both are held by Jersey City, by the sinking fund, and the sinking fund has been brought up to date.

Q. And therefore these bonds have not been paid. They are overdue, and the financial condition, so far as you are aware in your administration, has not been affected? A. No, sir; as I stated before these bonds are held by the Sinking Fund Commission of Jersey City.

20 Q. Does there appear in this budget any appropriation for the sinking fund? A. Yes, we have appropriated \$240,000 for the sinking fund.

Q. Is it included in that provision of \$240,000? A. No, sir.

Q. Now, Commissioner, will you kindly look at your budget and explain to me the sinking fund installment due December 31, of \$240,910.72?

A. This amount of \$240,910.72 is actually based on the statutory requirements for the amortization of Jersey City's permanent indebtedness, and I submit the actual calculation with its result for your inspection.

30 Q. In this respect, are the temporary loan bonds and particularly that of the new hospital and the nurses' home, \$29,200 which is due February 23, 1918, is that included in the \$674,000? A. It is not.

40 Q. That bond was due February 23, 1918, why was that bond not included in this budget?

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MR. MILTON: Objected to on the ground it is immaterial and irrelevant.

A. Because that bond is held by the sinking fund of Jersey City, and the payment of it has not been demanded and further because a great many temporary bonds, temporary improvement bonds now outstanding for capital improvements will all be redeemed and refunded from a permanent bond issue when the buildings or improvements upon which said bonds were issued, are paid. 10

Q. Therefore, nothing happened to the financial condition of Jersey City because they did not pay the bond on February 23, 1918? A. No, sir; there is a great distinction between these bonds and other bonds taken out. The holders of these bonds understand they are to be redeemed out of the capital issue of bonds when the buildings are completed. We made no provision for the taking up of any bonds similar to those which are outstanding for capital improvements and none of them are included in this budget. 20

Q. Do you call repairs to engine Co. No. 10, \$2,300, temporary bond, a capital improvement? A. No, sir.

Q. That was due August 4th? A. What is the number of the bond? 30

Q. Certificate No. 6. A. I would like to correct my answer to the previous question by stating that I was under the impression the bond for \$2,300 capital issue bond was issued for some purpose other than construction.

Engine Co., No. 10 is a new building and this bond was not included in this budget because it will be refunded the same as all capital issue bonds are refunded out of the permanent long term issue. I would also like to say in that con- 40

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nection this, if a building happens to be completed it does not necessarily follow a permanent bond issue will be dated from the very date of its completion because it requires some time in advertising for bids, and to get the lowest possible rate of interest, and under the present conditions of the money market, and the liberty drives going on, and the country in a state of war, I deemed it unadvisable to float any permanent bonds until conditions in the money market eased up.

Q. Commissioner, will you kindly look at the budget, December 1, 1917, or November 30, 1917, and tell me the amount of the sinking fund installments? A. There was no provision made for the sinking fund in that budget.

Q. Why was there no provision made for the sinking fund in that budget and there was in this budget? A. I am sure I cannot answer that. I had nothing to do with the making of that budget.

MR. MILTON: The fact is that prior to 1917 there had accumulated in various sinking fund accounts a large surplus due to inaccurate basis of amortization; in some of the sinking fund accounts there were deficiencies. As a result of the statute passed by the Legislature and forming one of the series of the Pierson Act, and under the advice and suggestion of Mr. Darby, Commissioner of Accounts of the State of New Jersey, there was an equalization bill adopted whereby the deficiencies in this Sinking Fund account where such deficiencies existed were made up by a diversion of surplus, and it was ascertained there was a sufficient surplus on hand for making up the deficiencies which elimi-

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nated the necessity of making any sinking fund appropriation in the budget for the year referred to.

Q. Will you kindly tell me whether or not there is any reason why the amount of \$240,000 could not be paid into the sinking fund of March 1, 1919, instead of December 31, 1918?

10

MR. MILTON: Objected to on the ground it contains an unwarranted assumption of facts and the city was not required to make an annual report of the sinking fund.

A. I suppose it was mandatory under Chapter 212 of the laws of 1917, one of the so-called Pierson Acts, to make the appropriation in this budget, and the amount placed in the budget alongside the sinking fund appropriation has been approved by the State Department of Municipal Accounts.

20

Q. Commissioner, can you tell me whether or not there was any amount in the budget, December 1, 1917, to November 30, 1918, for assessment bonds? A. I cannot, Mr. Lane, I have not examined that budget. I notice from a copy of the budget you refer to that no provision is made therein for any such act and the reason of course I do not know because I had nothing to do with the making up of that budget.

30

Q. Now, Commissioner, as I understand it, outside of salaries and claims you state that it is the annual budget? A. Outside of salaries and claims for the employees and departments of Jersey City it is an annual budget.

Q. Commissioner, I notice you have in your budget under Municipal Publicities and advertising an amount of \$20,800; what is that for, is it for the advertising for the month of Decem-

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James F. Gannon—Direct

ber? A. Yes, that item will not be used because I intended to embark in an extensive advertising campaign.

Q. Do you intend to embark in an advertising campaign in which you would spend \$20,000?

10 MR. MILTON: Objected to on the ground it is irrelevant, immaterial and incompetent.

A. That is problematic; it would depend. If I went into a newspaper campaign of advertising Jersey City in the large newspapers circulated in industrial sections, \$20,000 would not go very far.

Q. Have you any item in this budget for incidental expenses? A. No, sir; not for my department.

20 Q. I notice in this budget you have an item railroad tax litigation, and real estate, personal property appraisal, is that for the personal tax litigation and real estate, personal property appraisal intended to be spent in the month of December? A. In July when I made this budget up I did not know how much I would need for that purpose. I will not need anywhere near that amount; in all probability I will only use \$3,000 or \$4,000 and the balance will be carried into surplus revenue when the next budget is made up.

30

Q. Will you kindly tell me, from that budget, what other item in addition to the \$20,000 and \$35,000 will probably be carried into surplus revenue?

MR. MILTON: Objected to on the ground it is incompetent, immaterial and irrelevant.

40 A. There may be some portion of item 206, printing, stationery and supplies, \$5,000, car-

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ried into surplus revenue. This would seem like a large appropriation for one month, but it is a fact that during the month of December, we pay for the printing of all tax bills and the issuance of new tax books and the rebinding of old books; there may be a small amount of this carried into surplus revenue. All the other items appear to be for salary and unless I or some of the other employees in my department die before December 1st, I do not anticipate any additional surplus revenue. 10

Q. Can you tell me what the item, departmental expenses, services rendered to all departments, \$2,000? A. That comes under the head of Law Department, and that item covers the expense of litigation in court, and the expense of the Law Department in the trial of cases. It may be possible that some of that amount will be carried into surplus revenue. 20

Q. Going back to this item, tax litigation, is that to pay any of the expenses incurred in the city tax fight? A. No, sir.

Q. Just what—was that all paid in December of last year? A. No, it was paid throughout the year.

Q. Exactly. A. Mr. John Brackenridge was retained by Mr. Brensinger to appraise the railroad property in Jersey City. This appraisal ran for a period of several months. That work is all completed now and can be used for trial purposes. 30

Q. Can you state why, if that work has been completed, the appropriation this year should be \$35,000 instead of \$25,000?

MR. MILTON: Objected to on the ground it is incompetent, immaterial and irrelevant. 40

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10 A. I cannot state that now, but I could not accurately ascertain that in July when the budget was made up. The railroad act requires, on second class railroad assessments made by the state board that appeals to be taken be filed with the state board before the third Monday in November and requires the case to be presented and the evidence be heard by the first Monday in January, after which permission is granted by the Attorney General to review second class railroad property and all railroad appraisals and surveys will be required to be in court for approximately thirty days from the days set for the hearing which would be some day after November 9th and down to January 1st, and this will consume a considerable amount of money. In addition to this, the Pierson Act changed the date of the ascertainment of the value of taxable property in Jersey City from May 20 to October 1, and which required the re-surveying of personal property in Jersey City which is going on at the present time in order to obtain additional rates and properly distribute the burden of taxation which services will cost a considerable amount.

30 Q. And paid for out of this money? A. No, sir.

Q. And these services were performed from October 1st on? A. No, sir.

Q. When did they start? A. These men have been working for about ten days and will be working, I anticipate, during the entire month of December, but their bills for services will be rendered in December.

40 Q. If they are working the entire month of December, how will their bills be rendered; will their bills be rendered before they have com-

James F. Gannon—Direct

pleted their work? A. Not until their work is completed.

Q. When will their work be completed? A. some time in December. Notwithstanding this expense, I anticipate a substantial amount of this \$20,000, which was only an estimated amount, will be carried into surplus revenue.

Q. You know there was an item put in this budget for twenty-five or thirty thousand dollars for the cutting of lawns, etc? A. That was in Commissioner Moore's department. 10

Q. Did you go over that item with him? A. I will have to depend on my recollection of last July when we discussed every one of these items and I have not a very clear recollection of it.

Q. What is your recollection as to that item? A. I have a recollection of an item for that purpose, but I do not recall the exact amount. 20

Q. As you know, I have not gone over this detailed budget until this morning, and I ask you if I may have it for use for the rest of the afternoon? A. You may have it for use at any time during these hearings to be used in this building, as this copy is the only copy which we have on file.

Q. Commissioner, I assume you have considered the making of your tax budget for the year 1919? A. Your assumption is incorrect; I have not.

Q. Will you state in making up this budget whether you did not consider what items should be put in the 1919 budget and what should be put in this budget? 30

MR. MILTON: Objected to on the ground it is incompetent, immaterial and irrelevant.

A. In making up this budget, I had nothing in mind in regard to the making up of the next budget. 40

James F. Gannon—Direct

Q. Did you not consider whether certain items should be put in this budget or in the 1919 budget?

MR. MILTON: Same objection.

A. I considered only the items that were proper items to be included in this budget.

10 Q. Did you consider whether or not in the 1919 budget, under the existing law, there shall be any appropriations for school purposes?

MR. MILTON: I make the same objection.

Q. What is it you consider should go in the next budget?

MR. MILTON: Same objection.

20 A. I consider, acting upon advice of the Corporation Counsel, that it will not be necessary to appropriate in the next budget any fund for local school purposes.

Q. Mr. Gannon, can you tell me what the incidental expenses in Mr. O'Brien's department for \$1,400 were for? A. I recall that amount was requested for Commissioner O'Brien for the purpose of sending detectives to different places to detect crime. For instance, when Judge Warren's car was stolen, it was necessary to send detectives to New York City to apprehend the criminal, and he is now in jail in the Hudson County Jail in Newark Avenue. That amount could not be accurately calculated. Perhaps the entire amount will be used; on the other hand, if the present good order of things continues, probably a large amount of it will be carried into surplus revenue.

30 Q. Were there any such items of incidental expenses allowed in other departments—any other commissioners? A. I think not.

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James F. Gannon—Cross.

CROSS-EXAMINATION BY MR. MILTON:

Q. Commissioner, when the question of the present budget was first taken up, you advised with your deputy, Mr. Budd, and with Mr. Stout, and with Mr. Milton of the Law Department, in respect of the form and contents of the budget, did you not? A. I did.

10

Q. And was there considerable discussion and a very protracted conference as to the construction to be put upon Chapter 238 of the laws of 1918? A. There was.

Q. It was finally determined by the Law Department, in conference with you, that the statute in question authorized the adoption of a budget for the month of December, 1918; that is true, is it not?

20

MR. LANE: Objected to on the ground that the question is entirely leading and while it is cross-examination, Mr. Gannon is a Commissioner of Jersey City, and an official of Jersey City, and should be permitted to testify as to just what the condition is without having the words put into his mouth by Mr. Milton.

A. That is true. If it will better satisfy Mr. Lane by your asking the question in that way, I think I shall be able to answer it.

30

Q. In the making up of the budget the procedure that was followed was to direct each Commissioner to prepare a statement and estimate of what the needs of his department were for the month of December? A. Yes, sir; that is correct.

Q. And when those estimates were prepared there was a conference of the Commissioners with the Law Department upon the question of

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James F. Gannon—Cross.

the scope of the budget and how much should be appropriated for the various city needs? A. Yes, sir.

Q. In arriving at the amount that should be appropriated for what I might call strictly local purposes, what was the method that was pursued or adopted? A. First, in regard to salaries, the
 10 salaries were calculated on a twelve months' basis and the amount divided by twelve; that fixed and determined the amount of salaries which would have to be paid during the month of December. In regard to claims I prepared a statement including every department from the first of January, 1918, down to the time of making the budget. I classified and analyzed those claims on a monthly basis and when the different Com-
 20 missioners brought in their requests for certain amounts of money to be appropriated for claims, I compared the amounts they requested with the statement which I had made of past expenditures for claims in order to be certain that the amount asked by each Commissioner for claims was not excessive or extraordinary during the period for which they applied?

Q. Was there some increase for the amount of December as compared with either the preceding
 30 December or as compared with one-twelfth of the preceding year's appropriation? A. Yes, there was. I could not state just now what that increase was in percentage, but I took official notice of the fact that the cost of all commodities had risen and a comparison of their requests for claims with the basis of their drawings for claims during six months previous to that is very interesting.

Q. Then whatever increase there was is either
 40 due to the fact that the year following the adop-

James F. Gannon—Cross.

tion of the preceding year's budget had shown a tremendous rise in the cost of all materials which the city purchased, and the increase had relation to the fact that those materials cost a great deal more—is that so?

MR. LANE: I make the same objection as to the leading character of the question as I made before. 10

A. Yes, that is correct.

Q. You spoke of a comparative statement of amounts that had been expended by the various departments, month by month, to the amount that was allowed or appropriated for the month of December? A. I did.

Q. Have you such comparative statement? A. I have. 20

Q. Arranged in tabulated form, under departments? A. Yes, and by months.

Q. Will you say what the claims amount was for the month of December, 1918, appropriated for the Department of Public Affairs? A. \$26,910 was the total of their appropriation, outside salaries, for December, 1918.

Q. What were the monthly amounts during the preceding eleven or twelve months expended by that department? A. They ran all the way from \$3,000 to \$22,000, dependent upon what the conditions were in the City Hospitals. 30

Q. What would you say as to the average amount expended? A. The average for the Department of Public Affairs for the month of December is larger than any of the preceding six months' averages, due in a large measure to the tremendous increase in the cost of drugs and medical supplies. During the month of May the Department of Public Affairs used \$22,946. 40

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for claims. We appropriated \$26,910. for the month of December. It must be borne in mind that the City Hospital is nearing completion, additional help and additional supplies are required, and also that the Isolation Hospital is being extended.

10 Q. Were these demands upon the facilities of both the Main Hospital and the Isolation augmented or increased by reason of the existence of barracks containing soldiers in and about this vicinity? A. Yes, sir; and particularly the Isolation Hospital; we have a number of soldiers there sent to us by the U. S. Government to take care of.

20 Q. Suffering from contagious diseases? A. Yes, sir; and we are obliged to expend much more money there than we had originally anticipated; however, a large portion of what we spend there comes back to Jersey City from the U. S. Government in the form of services rendered the Government.

30 Q. Do you know whether or not, the allowance made by the Government, represents the cost of keeping these patients; does it include overhead? A. It does not include overhead, it includes so much per cot per day and it is not a profitable proposition to the City; I do not think we get out whole on it, but we all have to co-operate in these times of stress.

Q. As a matter of patriotism the City took over these men and cared for them? A. Yes, sir.

40 Q. With reference to the Department of Streets and Public Improvements, what was the appropriation made for claims in that Department? A. We provided for the month of December, \$34,055. for claims in that department during the month of December. During the month of July, that

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department used over \$36,000. for claims; during the month of June—these are both 1918—that department used over \$30,000. for claims.

Q. You speak of each month? A. For each month. During the month of May they used over \$68,000 for claims. That particular appropriation is very hard to estimate because of labor conditions and Commissioner Fagen at the time he requested this amount went into the matter at great length with me and with the other Commissioners, stating that, to the best of his ability, that was as near as he could make his calculation; during the month of August, 1918, Commissioner Fagen used very nearly a similar amount. 10

MR. LANE: Similar to what?

Witness: To the amount appropriated for December, the amount appropriated for December being \$34,055. and the amount used in August being \$34,066.96. 20

Q. What was the result of these investigations, if any were made, as to the cost of running this department for the month of December, as against the preceding period of the preceding month?

A. Commissioner Fagen stated the facts at that time; I do not recall them in detail, except that he stated before the Commission that his department was very hard to estimate for, six months in advance. 30

Q. That also includes, I assume, some amount for snow removal, which is always more or less contingent, depending on the mercy of Divine Providence. A. I presume it does.

Q. With reference to the Department of Parks and Public Property, what was the amount appropriated for that department? A. For the month of December, 1918, we appropriated \$7,897. 40

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I remember having told Commissioner Moore at that time that I did not think he was asking for enough for during the month of July he used over \$11,000. and during the month of June he used over \$11,000. That department is also very hard to estimate. In April, 1918, that department used over \$65,000. for similar purposes.

10 Q. That is for improvement of parks and public property? A. Yes, sir. And their monthly claims ran all the way from \$3,700 to \$65,000. That is accounted for by plans of development that the Department of Parks has in mind what are ordinarily heavily executed in the spring of the year.

Q. That item of claim of \$65,000. really represents the amount of contracts let upon competitive bidding for the improvement of parks, does it not?

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MR. LANE: Objected to on two grounds first, as entirely leading and second because the Commissioner has not shown himself to be qualified to answer the question.

A. I am qualified to answer that question and if Counsel would like to see the claims I should be very glad to get them. Mr. Milton is quite correct in his assumption.

30

Q. In other words the City purchases large amounts of trees and shrubberies which are set out in the spring? A. Yes, sir.

Q. And those purchases are made as the result of competitive bidding? A. Yes, sir.

Q. Regarding the Department of Public Safety, what was the appropriation for claims for that department for the month of December? A. \$13,650.

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Q. How does that compare with the preceding months? A. During the month of July, 1918,

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in which month we made the budget up, the Department of Public Safety spent on claims \$15,753; during the month of May they spent approximately \$12,500; during the month of April, approximately \$18,200; so that that amount was entirely normal in every respect and somewhat less than I imagined it would be or should be.

Q. The Department of Revenue and Finance, 10
what was the amount appropriated for claims for the month of December in that Department?

A. \$4,075.02. I have the Law Department and the City Clerk's Office separate on this schedule.

Q. How does that compare? A. That is considerably higher than it was during the three preceding months and a little bit higher than the other preceding months. The reason for that is that during the month of December we have to pay for the printing of tax bills, for the rebinding of old books and for the printing and buying of an entire new set of field books and tax books. 20

Q. Is that appropriation out of proportion to the preceding months in view of special needs for the month of December? A. I should say not; it was as near as I could calculate.

Q. That I think covers all of the departments in relation to their claim accounts. The salaries you say were fixed at exactly one-twelfth of the amount appropriated for last year? A. Yes, sir; that is correct. 30

Q. With reference to the budget as a whole it can be classified, can it not, into amounts which you have given for salaries and claims, which aggregate approximately \$449,000; debt service which is \$1,441,000., appropriations for local schools, \$1,331,000,—I am speaking from recollection now? A. That is correct. 40

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Q. The amounts which were added by the County Tax Board, state road tax \$358,000; State School Tax \$848,000 and Jersey City's share of the cost of County Government, \$1,700,000? A. Yes.

10 Q. As to the items for State Road Tax, State School Tax and the share of the City of the cost of County Government, they were added to the appropriation by the County Tax Board? A. That is correct.

Q. The item of \$1,331,000 for local schools is the amount certified to the Board of Commissioners by the Board of School Estimates? A. Yes, sir.

Q. And is for the full fiscal year, July 1, 1918 to June 30, 1919? A. That is correct.

20 Q. The item of debt service, \$1,441,000 consists of a Sinking Fund appropriation of \$240,000 and that represents the amount necessary to be annually appropriated in order to meet the amortization requirements of the Sinking Fund? A. And is certified to me by the State Auditor of Municipal Accounts.

Q. Mr. Dougherty? A. Mr. Dougherty.

Q. The amount of debt service also includes \$674,000 of temporary loans? A. That is correct.

30 Q. When I say temporary loan bonds I mean not only temporary loan bonds, but temporary bonds and emergency bonds and notes? A. I would classify them all as temporary loan bonds.

Q. Of that sum of \$674,000, \$329,000 is the amount that was rendered necessary in order to meet the salary increases of the Fire and Police Departments, from the time they were increased in March, until November 30, 1918? A. That is

40 correct.

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Q. The balance of \$340,000 is represented by various bonds that were issued from time to time prior to December 1st and after December 1st, 1917? A. Down to the date when we were making up the budget.

Q. Down to the 6th or 7th of August, when the budget was adopted? A. That is correct.

Q. Included in those temporary loan bonds are various obligations that were issued, among them being bonds to pay judgments, to make up amounts necessary to make repairs to buildings for the Board of Education, as the purchase of furniture for schools, special appropriations such as advertising tax sales; damages awarded in condemnation suits; deficit in the appropriation for the Board of Education, amounting in this instance to \$36,000; expenses of carrying on litigation against the trunk line railroads in reference to the assessment upon their second class railroad property, and for items of that character? A. Yes, sir. 10 20

Q. The Board of Education requirements had to be met by the issuance of temporary loan bonds? A. Yes, sir.

Q. The requirements for the Board of Education, which were met by the issuance of temporary loan bonds were \$124,000? A. I believe that is correct. 30

Q. So that out of the \$674,000, there was \$124,000. for the Board of Education and \$329,000. for the Police and Fire increases, a total of \$453,000? A. That is substantially the amount.

Q. And the balance represents the other items that I have adverted to, including additional supplies for the Main and Isolation Hospitals, rendered necessary on account of the increase of 40

James F. Gannon—Cross.

the use of their facilities? A. And part of this money we have already gotten back.

Q. The item of \$125,000. in the fixed charges, or debt service, for interest on temporary improvement bonds and promissory notes represents interest that will become due during the month of December? A. That is correct.

10 Q. The item of \$80,539, is for general bonds that will become due during the month of December? A. And for the bonds themselves?

Q. The bonds themselves. A. Yes, sir.

I want to correct the answer to the question previous to the last question by stating that that \$125,000 is an approximation of the amount required to pay interest on temporary loan bonds from July 1, 1918 to December 31, 1918.

20 Q. And on promissory notes? A. And on promissory notes.

Q. If no budget had been drawn and no appropriation had been made and a general bond of \$80,539, which you say would fall due in December, had become due, what would have been done about it? A. We would have defaulted on the payment of this bond, something that Jersey City has never done from the time of her inauguration. I know of no way in which we could have provided for the payment.

30 Q. Counsel for the Prosecutor has asked you what about meeting general bonds that fall due by temporary loan bonds to raise the money to pay the general bonds falling due; what have you to say as to the policy of such finances and as to whether or not there is any provision in the law that you know of for it? A. I know of no provision in the law for it, and if there is any provision in the law I would have considered it very bad financing to continue tem-

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James F. Gannon—Re-Direct.

porary obligations. The spirit of the Pierson Act is to clear up your temporary obligations and to discharge them every year in the next annual tax levy, and that is exactly what I have done.

RE-DIRECT EXAMINATION BY MR. LANE:

Q. As a matter of fact, that is not exactly what you have done; what you have done is that you have cleaned up the temporary obligations and discharged them not in the next annual tax levy, as a matter of fact, but out of the next tax levy which is for local purposes only for one month? A. Well, I don't like to argue a question of law with you but I entirely disagree with you. I consider this in the next annual tax levy.

Q. You have stated that there was some \$65,000 of claims in the month of April in the Department of Parks and Public property; should not that have been an item to have been included in the tax budget for the previous year? A. That was appropriated and that amount of claims was used during that period. The Department of Parks and Public Property advertises under competitive bidding for supplies to run their parks and the contracts are awarded and the money spent; a large portion of their claims are spent in that one month and this money was appropriated under the previous budget and under their appropriation for claims for the previous year they spent \$65,000, for the reason that I have just stated, in April.

Q. What was the appropriation for claims for the Department of Parks and Public Property, for the preceding year? A. I will have to pick them out here and there.

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Q. Let us get them. A. Here is one

\$600.

4060.

4060.

17840.

180.

3725.

2160.

130.

3040.

300.

2200.

9000.

6800.

600.

19423.

2000.

1925.

500.

120.

200.

450.

1000.

300.

25.

30.

150.

1125.

3000.

500.

3500.

1200.

1200.

1800.

2900.

130.

200.

These total up \$96,312.

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I read these figures from last year's budget.

Q. Will you kindly turn to this budget which you have been reading from and tell me how much was appropriated for shrubbery such as you have been asking about? A. Under the head of Upkeep and Shade Tree, Lawns, Courts, Parks, Ball Field and Playground and Equipment, there was the sum of \$17,840, appropriated in the budget preceding this one. 10

Q. You testified that a large portion of this \$65,000. in April was for shrubbery?

MR. MILTON: Oh, he did not.

Q. It was for what? A. For supplies and plants and various articles for spring planting.

Q. Can you tell me what proportion of that \$65,000. was for such purposes? A. I cannot; you would have to examine Commissioner Moore on that and he can give you every item in detail. 20

Q. But the only item that was appropriated was \$17,000? A. Not for the purpose for which the \$65,000 was used at all.

Q. The only item for any other purposes covered in the \$65,000, or the major part of it, was \$17,400?

MR. MILTON: Objected to on the ground that the question is based upon an unwarranted assumption of facts. 30

A. I do not know exactly what the facts are. Commissioner Moore can tell you to a penny.

Q. Can you tell me whether there were temporary loan bonds issued for some portion of these claims for parks and public property? A. I think not.

Q. Do you know? A. There were none or they would be included in the item of temporary loan bonds that I enumerated this morning. 40

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Q. As a matter of fact, where claims come in during the year that have not been included in an appropriation, or that the appropriations are not large enough to cover, the city has been accustomed to issuing temporary loan bonds to take care of that, have they not? A. I do not know what the city has done in that respect.

10 Q. What has been done during the past year in that respect? A. For any purpose, unfulfilled on which we had a balance of last year's budget appropriation, that amount would be placed in a dummy account waiting for the claim to come in, and we estimated as nearly as possible in making that budget just how much the outstanding claims amount to, which never can be done with any degree of accuracy.

20 Q. Can you tell me what the claims in the month of December, last year, for parks and public property were? A. With pleasure. \$28,909; and we appropriated this December \$7877.

Q. Can you tell me, Commissioner, how it is that you make up for this December \$7877 for claims and last December they amounted to \$28,000? A. I cannot. I do not remember that. I was told the answer to that last July by Commissioner Moore, but I cannot remember it now.

30 Q. Can you tell me the total amount of the claim for parks and public property down to the end of September? A. About \$136,000.

Q. Although the appropriation was \$96,000 for the entire year, the amount of claims that actually came in up to and including the month of September, amount approximately to how much? A. \$136,000.

40 Q. I notice there were some temporary loan bonds issued for furniture for schools; how is it that was not included in the school budget? A. In the budget previous to this one?

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Q. Yes, or in the next school budget? A. It was not included in the budget we made up now, because we had already issued bonds for it, and provision for taking up those bonds had been made; the reason it was included in the previous budget was because the Board of School Estimates came down to the City Commissioners when they were making up their last budget requesting substantially that amount for repairs to school furniture and public buildings. The city commission at that time did not see fit to appropriate such a large amount without a thorough investigation of needs and the question of checking up those figures, sufficient time could not be given to doing this work between the time that their request was made and the last year's budget was adopted, and that is why it was not included. Subsequent to their request and subsequent to the adoption of last year's budget, the Superintendent of Buildings, the City Architect, and Commissioner Moore investigated their request and found it in all particulars to be reasonable and their figures to be substantiated by the estimate put on that work by those three gentlemen. Thereupon bonds were issued and we have now made provisions to take those bonds up out of this year's tax levy. 10 20

Q. Have you the financial report for the past three or four months? A. I don't know what you mean by the financial report. 30

Q. The monthly report that is required by the Walsh act? A. Yes, I guess we have that.

Q. Where is that? A. Copies are filed with the City Clerk and I can secure them if you desire them; so can any other citizen, taxpayer or politician.

Q. So far as the interest to the amount of 40

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\$125,000 is concerned would that affect the financial standing of Jersey City if that money were appropriated in a new budget to be adopted on January 1st and money borrowed on it?

10 MR. MILTON: Objected to on the ground that the question contains an unwarranted assumption of facts and law; there is no budget which can be adopted on January 1st.

A. My answer to that question is there is no budget to be adopted and we cannot legally adopt any budget on January 1st, 1919.

Q. When can you adopt such a budget? A. In February, 1919.

Q. You have to adopt it by February? A. During the month of January, 1919, or the latest
20 period is about the middle of February, 1919, so that if we do not make provision to pay bond holders \$125,000 in interest, and default in the payment of that small amount, I should say that would seriously reflect on Jersey City's credit.

Q. How much balance is there in the sinking fund at the present time? A. Not a great deal.

Q. Any resources? A. I cannot answer that
30 offhand, the figure; the sinking fund moneys have been seriously depleted by the purchase of temporary improvement bonds, and if we had ten million dollars in the sinking fund I would not take a chance of going to jail by illegally using that money to pay interest on bonded debts.

Q. But if you had ten million dollars in the sinking fund it would not be necessary to provide that \$240,000 for the sinking fund? A. Absolutely.

40 Q. Why? A. Because the law requires it.

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MR. MILTON: Not only the law, but does not the contract with the bondholder require it?

Witness: I do not know. I have never seen the bonds since I came into public office.

Q. You do know it was done in previous years?

A. Am I my brother's keeper?

Q. But do you know that? A. I do not know that. I know that many people in the past conducted the affairs of Jersey City in a shocking manner, but we are now endeavoring to do it according to law. 10

Q. Now, Commissioner, during the last year don't you know that the expenses of the City Hospital have increased over one hundred thousand dollars?

MR. MILTON: Objected to as incompetent, irrelevant and immaterial, as to what the expenses of the City Hospital have been; that is a matter of the exercise of discretion for the governing body. 20

A. I do not know exactly how much they have increased; they have increased probably because our hospital is constantly being enlarged and now near completion and our Isolation Hospital is filled.

Q. As I understand it, you have included in this budget in the appropriation for the isolation hospital, money which was necessary for the care of soldiers? A. Yes, sir. 30

Q. But that money will be returned to the city? A. Yes, sir.

Q. And then put in the surplus revenue account? A. Yes, sir.

Q. And deduct so much from the tax rate of next year? A. Yes, sir.

Q. When you had your conference with the 40

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commissioners, did you find any of their requests excessive? A. No, sir.

Q. Did you cut any of them down or were any of them cut down? A. I don't think so.

Q. Commissioner, you said, under Mr. Milton's guidance, that you conferred with Mr. Milton or Mr. Stout with reference to Chapter 238 of the laws of 1918; did you consider the question of the rate of the local tax exclusive of schools?

MR. MILTON: Objected to on the ground it is not proper re-direct examination, the matter not having been touched upon in cross-examination, also on the further ground that it is immaterial, irrelevant and incompetent; it calls for a conclusion.

A. I did not consider those rates separately.

Q. Did you consider in making up this budget the fact that the taxpayers of Jersey City when they paid this tax, the \$17.30 tax, would simply pay up to December 31st, 1918, whereas in the ordinary course of events, under the past existing laws, they would have paid for local purposes up to November 30th, 1919?

MR. MILTON: Objected to on the ground that the question pre-supposes that the City of Jersey City has a right to default in its obligation to the State of New Jersey, to raise the state road tax for 1918, the state school tax for 1918, and to raise its share of the cost of administering the county government. Also upon the further ground that it is mandatory upon the city to make sinking fund appropriations, not only to obey the law, but also to keep faith with the holders of its bonds, and keep its contract with them, that the bonds will be annually

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amortized, and on the further ground that the question calls for a conclusion?

A. Yes.

Q. And in what way? A. From all angles.

Q. What do you mean by that? A. I mean that I considered that we were appropriating for local purposes one month's appropriation for salaries and claims, and that the budget was in all other respects, by mandate of law, a yearly budget, which included one whole year's provision for sinking fund, one whole year's provision for state road tax, one whole year's provision for state school tax, our portion of the county tax inserted by the county tax board, and one whole year's provision for local education purposes. 10

Q. Commissioner, you are not as frank with me as Mr. O'Mara was when he was examined. I asked him why there was included in the budget adopted by the county under similar circumstances large sums of money for various purposes, various county purposes, and I asked him why they were not left out of this budget and put in the annual budget or the budget of, from January 1st, 1919, on, and he said that would make it entirely too high. Did anything like that enter into your calculations? A. No, sir. 20

BY MR. MILTON: 30

Q. You have been as frank as the circumstances permitted? A. I have stated the facts exactly as I recall them, and I have given my interpretation of the law exactly as I interpret the law, and in all probability Mr. O'Mara's remarks were directed from a layman's standpoint, he not being a lawyer and probably not understanding as much about the Pierson Tax Act as I do. 40

A. Harry Moore—Direct.

The further taking of testimony was then adjourned until Friday, November 14th, 1918, at ten o'clock A. M., at the Corporation Counsel's office, City Hall, Jersey City, N. J.

HERBERT W. KNIGHT,
Supreme Court Commissioner of New Jersey.

10

Jersey City, N. J., November 14th, 1918.
Before—HERBERT W. KNIGHT, Supreme Court Commissioner.

APPEARANCES :

HARRY LANE, Esq., for the Prosecutors.
JOHN MILTON, Esq., for the Respondents.

A. HARRY MOORE, sworn for the prosecutors.

20

DIRECT EXAMINATION BY MR. LANE:

Q. Commissioner, you are a member of the Board of Commissioners and director of parks and public property? A. Yes, sir.

Q. And have been since Commission Government went into effect some four or five years ago? A. Yes, sir.

30

Q. And during the time between the death of the late Commissioner Bressinger and the election and taking of office by his successor, you also had charge, in a fashion, of the Department of Revenue and Finance? A. I did.

Q. Do you have a recollection, during the administration of Commissioners Bressinger and Byrnes, of moneys that were on hand in the water department being used for other purposes in Jersey City?

40

MR. MILTON: Objected to as irrelevant, incompetent and immaterial.

A. Harry Moore—Direct.

A. Why, there was some discussion about it.

Q. And you do know that these moneys had been used by the Director of Revenue and Finance—taken out of the water account—for use for other purposes in Jersey City?

MR. MILTON: Objected to for the same reason.

A. I don't recall now; I remember he and Mr. Bressinger were arguing about water moneys. 10

Q. Don't you remember Harry, Bressinger came before the Commission and these facts were brought up, there was some six hundred thousand taken out of the water account? A. Commissioner Byrne made that statement, I do not know what was brought up at the time.

Q. You know some moneys were taken out? A. No, I do not know as a matter of fact there was any money taken out. 20

Q. Commissioner, you also know that on different occasions Jersey City has temporarily borrowed money from various banks?

MR. MILTON: Objected to as immaterial, irrelevant and incompetent.

A. It has borrowed money, of course.

Q. From the various banks? A. All I know is that they borrowed money. Commissioner Gannon is director of revenue and finance, and, of course, it is his department. 30

Q. Yes. A. And I naturally assume he had to borrow money.

Q. Now, Commissioner, you, of course, voted on this entire budget? A. The passage of the budget, yes.

Q. Did you or not attend conferences on this budget? A. I was not there when the budget was 40

A. Harry Moore—Direct.

introduced because I was ordered to the Officers' Training Camp at Sea Girt, and I was down there. but I voted on the final passage of it. There were several conferences.

Q. You looked over the budget to a certain extent? A. Yes, sir.

10 Q. And there was some discussion was there not as to the enormous amount of debt service in this budget?

MR. MILTON: Objected to on the ground the question assumes that the debt service is enormous.

MR. LANE: I will qualify that question by striking out the word "enormous" and inserting the figures \$1,400,000.

20 A. There were discussions concerning the whole budget at the conferences; we always do that.

Q. Commissioner, don't fence with me; wasn't there an objection as to this particular item?

A. None that I know of, not while I was there; as I said, it was introduced when I was down at Sea Girt.

Q. Didn't you, upon your return, when you voted on this budget have an interest sufficient to look into the item of \$1,400,000? A. Of course, I did.

30 Q. Yes. A. And the entire budget. I had to satisfy myself as far as I could as to the entire budget, as I said, there having been several conferences held at which I was not present.

Q. Now, Commissioner, as a matter of fact, you objected to some of these items being put in there didn't you? A. No, sir.

Q. You did know, of course, that there was put in this budget some 674 temporary loan bonds
40 some of which had been carried at least for one

A. Harry Moore—Direct.

year, did you not? A. I knew there was a debt service and it was approved by the director of revenue and finance and by the Corporation Counsel, and that satisfied me.

Q. And therefore having been approved by the Director of Revenue and Finance and by the Corporation Counsel, you did not think it was necessary to investigate it any, but simply to put in the \$1,400,000? A. No, I saw nothing in it which appeared irregular and illegal, and counsel's assurance it was all right, and my own investigation, satisfied me. **10**

Q. Kindly state what your investigation was? A. To read over the items.

Q. You did not read over the bonds or go into any detailed examination of them? A. No, sir.

Q. And see just what each bond was issued for? A. No, sir. **20**

Q. Did you consider the question of the \$329,000 worth of police and fire salaries' bond? A. I did not consider that any more than the other.

Q. No more than in the ordinary way? A. It was an increase—necessary increase.

Q. Did you consider the act under which these bonds were issued, providing that these bonds should be included in the next annual budget? A. No, sir. **30**

Q. And that the provision in the law was that they should be paid not before December 1st, 1918, but before December 1st, 1919? A. No, sir; I look for my law to the corporation counsel and the director of revenue and finance.

Q. Commissioner, were any of these temporary loan bonds issued for your department? A. I do not know; I have—well, for instance, there is a bond there for improvement of building, renovation. **40**

A. Harry Moore—Direct.

Q. The firehouse? A. Yes, sir.

Q. Outside of these repairs? A. I believe not; not outside of improvements and repairs; I do not know of any.

Q. Commissioner, I assume that you have gone over carefully, since last night, the question of appropriations for last year being considerably
 10 lower than the amount has been heretofore? A. I have not gone carefully over it. I made up my budget. You mean that my budget this year is higher?

Q. No, the expenditures for last year were higher than the appropriations for last year, to the extent of some thirty or forty thousand dollars? A. I did not.

Q. Of claims, do you know that is so? A. No.
 20 Of course, in the beginning of the year you got a man for two or two and a half a day and now they demand greater wages and there is a material increase in things. For instance, you got coal last year as low as five dollars a ton; this year you are paying as high as eight and ten dollars a ton, and my department supplies the coal; and what is true of coal and labor is true of a great many other things and it would not surprise me if what you say is the truth because of those conditions.

30 Q. Now, Commissioner, for salaries and claims, there was included in the budget for the year ending November 30th, 1918, some \$96,000 as figured by Commissioner Gannon yesterday and there was expended by your department the sum of over thirty thousand dollars, up to the end of September, being only ten months.

MR. MILTON: I object to that on the ground it is immaterial, irrelevant and incompetent.

A. Harry Moore—Direct.

Q. Can you tell me how the difference between the ninety-six thousand and thirty thousand was paid, out of what it was paid?

MR. MILTON: Objected to on the ground it is based on an unwarranted assumption of facts; it is immaterial, irrelevant and incompetent, the items in question forming a part of the budget of the fiscal year ending December 1st, or November 30th, 1918, and not having relation to the present inquiry. 10

A. I do not believe it is so; if it is, I do not know it. I have no record to show that it is so. Well, you know, too, if there is an increase—for instance the library is on my list—in my department—

Q. Just a minute before you go any further. I am not asking you if there was an increase or questioning the increase; all I am trying to find out is out of what that thirty thousand dollar increase was paid? A. Well, the only thing I can figure out would be for the library. 20

Q. I don't mean to whom paid out; I mean out of what moneys.

BY MR. MILTON:

Q. Assuming you have exhausted your appropriation? A. How was it paid? 30

Q. If the appropriation has been exhausted. A. It must have been paid out of temporary loan bonds. I did not know that my appropriation—of course my appropriation would not have been exhausted—

BY MR. LANE:

Q. I am not investigating this budget of 1917, as to why the increase has been made; I am endeavoring to find out how they were paid. A. 40

A. Harry Moore—Direct.

I do not know of any such increase myself; I have not heard of it.

Q. Well, you do know that temporary loan bonds were used to make certain payments in your department? A. For improvements of buildings, yes, sir.

10 Q. Will you say now, that there were no such increases of the appropriation. A. I do not know of any, unless the mistake is here. You take, for instance, some of our appropriations have not been used at all. They go into the general fund. Now take the improvement of a building like No. 3 Fire House; we get a certain amount to improve it; now we find it costs more, they want something else. Now, then, that account is cleaned out; don't you see you have got to go and get some, and I imagine that is the way.

20 Q. That would be paid out of temporary loan bonds? A. Yes, sir.

Q. Commissioner, you know these temporary loan bonds were continued from year to year and were only put in annual budgets, do you not, when they were paid? A. Annual budgets?

Q. Yes. A. Yes.

30 Q. And you knew this was, in a true sense, respecting the local purposes of Jersey City, an annual budget, do you not? A. No; I knew it was both.

Q. In what particulars? A. Annual in a degree and monthly in a degree. Monthly in the degree of current expenses and annual in the degree of certain annual taxes like the annual road tax.

40 Q. We will eliminate everything excepting what appears in that ordinance, and then we will eliminate the Board of Education; outside of the Board of Education is there anything else in that

A. Harry Moore—Direct.

budget that is an annual budget? A. The road tax is an annual budget.

Q. Eliminating the road tax? A. Yes.

Q. Is there anything in the \$1,900,000 appropriation for Jersey City? A. Of course you must eliminate everything except the debt service.

Q. Yes, I am leaving everything in that goes to make up the \$1,900,000. A. That is my idea of an annual budget; insofar as the debt service is concerned, I have to take that advice from the Corporation Counsel, the legal department and the commissioner or director of revenue and finance. 10

Q. Commissioner, so far as the items for snow removal is concerned, I see it is only six hundred dollars, including some other repairs and supplies, or does that simply pertain to snow removal? A. No; all supplies and repairs to the City Hall. 20

Q. Commissioner, I notice there was a temporary loan bond included in this appropriation for the amount of \$6000 for the Home Defense League, is that the name? A. Yes, sir; Home Defense League.

Q. Was that money expended last year for the purpose of equipping the Home Defense League or is some of it on hand? A. We expended almost all of it; there is some little left. 30

Q. What for? A. Uniforms and military equipment.

Q. And that is all? A. That is all it is expended for.

Q. Uniforms and equipments? A. Yes, sir.

Q. There is approximately how much left, one or two thousand dollars? A. I would say approximately—well, not a thousand dollars; less than a thousand dollars.

Q. Commissioner, I notice in the making of 40

A. Harry Moore—Direct.

your detailed budget that you have taken the appropriations 1918-1919; I assume by that you meant what would be the fiscal year from November 30th, 1918, to November 30th, 1919? A. Yes, sir.

Q. And that followed on with an item "For fractional part, appropriation, December, 1918"?

10 A. Yes, sir.

Q. Of course you did not simply divide it by twelve to make up the amounts for December's figures. You figured what would probably be done during that particular month and expended during that particular month? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. Can you tell me what the item \$2,085 for upkeep and maintenance of shade trees, lawns, etc., is? A. The upkeep of lawns, parks, play-
20 grounds ball fields, etc?

Q. Yes. A. Why it is for manure, \$500, and about \$200 for arsenate of lead for scale on the trees, preventative measure.

Q. Just for the month of December? A. Oh, we put that in December; being done about the first of December. For instance, we have our bid in now for manure.

Q. Was that the estimate of the amount sup-
30 posed to be expended in December? A. Yes, sir.

Q. Or was it to cover any deficiency for previous months? A. No, sir.

Q. Or to pay for succeeding months? A. Oh, no; if there is any money left over it goes into the general fund.

Q. Surplus fund? A. Yes, sir.

Q. Commissioner, on considering this budget in respect to the fixed charges, did you consider that in this budget the fixed charges amounted
40 to over double what the fixed charges in the annual budget preceding amounted to?

A. Harry Moore—Cross.

MR. MILTON: Objected to on the ground it is immaterial, irrelevant and incompetent, and calling for a conclusion; fixed charges being mandatory in some respects and discretionary in others.

A. I considered, of course, all the items.

Q. Did you consider this one particularly? A. No, sir.

10

CROSS-EXAMINATION BY MR. MILTON:

Q. Commissioner, it has been suggested or perhaps intimated by Mr. Lane that your department has overdrawn its appropriation up to September 30th by something approximating \$30,000 for claims only. I call your attention to the fact that your budget appropriation for claims for the fiscal year ending November 30th, 1918, was \$161,636, and that there was expended therefrom for claims up to September 30th, 1918, the sum of \$149,627.59; that is correct, is it not? A. Yes, sir.

20

Q. Now, that leaves as a matter of fact, a credit to your claim account of substantially \$12,000? A. Yes, sir.

Q. So that your appropriation is not, in fact, overdrawn or expended? A. No.

Q. And the requirements for October and November will not be more than the balance which you have on hand? A. That is right.

30

Q. Now, it has also been stated here by Commissioner Gannon that your appropriation for claims was in the neighborhood of \$90,000. That, you say, is a mistake? A. I do.

Q. Commissioner Gannon did not give you credit for the budget appropriation for the Free Public Library which is under your department

40

A. Harry Moore—Cross.

for the sum of \$84,000 that should be credited to you? A. Yes, sir.

Q. And Commissioner Gannon in stating the amount of money expended by your department charged you with the expense of the Free Public Library as he should have done? A. Yes, sir.

10 Q. Now, when you speak of your claims of account it not only includes small items of disbursements which are directed without competitive bidding, when under \$500, but it also includes items of disbursements for purchase of supplies which are secured as the result of competitive bidding? A. That is true.

Q. The claim of appropriations of \$161,000 does not of necessity represent in its entirety moneys spent without public competition? A. Oh, no.

20

BY MR. LANE:

Q. But large amount does cover claim in which there is no competitive bidding held, does it not? A. Yes, sir.

Q. Commissioner, why is it that when asked by Mr. Milton you are so positive of your answers about these items and when I asked you you did not know if the appropriations had been expended or not? A. I do not wonder I didn't know.

30

Q. You seemed surprised they were? A. I said there must be something wrong. I have not the figures; you cannot expect me to carry thousands of dollars in my mind. I could have gotten the figures. I said I would when you said I was overdrawn. I didn't see how it was possible to be overdrawn unless it was due to the library appropriation, and when I mentioned that you said you were not getting at what was spent but out of what it was paid.

40

William J. Budd—Direct

Q. Commissioner, do you know how much there is for the work done and material furnished prior to September 30th, 1918, which has not been paid? A. No, I cannot tell you that.

MR. LANE: That is all.

WILLIAM J. BUDD, sworn for the prosecutors. 10

DIRECT EXAMINATION BY MR. LANE:

Q. Mr. Budd, you are the Deputy Comptroller of Jersey City? A. Yes, sir.

Q. And have held that office since Commission Government went into effect four or five years ago? A. Yes, since 1908.

Q. You were under the old system? A. Yes, sir. 20

Q. And Mr. Budd, you were the Deputy Comptroller during the time of the discussion of the water case I have spoken of? A. I was not present when you spoke of that.

Q. You were present, I mean by that you were the Deputy Comptroller at the time that moneys in the water accounts were used to pay expenses of Jersey City.

MR. MILTON: Objected to on the ground it is an assumption that water moneys were used to pay expenses. 30

MR. LANE: All right.

A. I was present where do you mean, downstairs?

Q. You were Comptroller? A. Yes, sir.

Q. Were moneys used to pay expenses out of the water account?

MR. MILTON: I object on the ground it is immaterial, irrelevant and incompetent 40

William J. Budd—Direct

and it is based upon a conclusion that water moneys were used to pay expenses.

Q. Just explain what was done, what happened?

A. Under resolution of the board \$800,000 if I remember correctly was transferred from the water account temporarily to the general account pending the collection of taxes that were in arrears to save the City issuing temporary loan bonds and this money lying idle and not being used in the Water Department.

It is good financial policy to use the City's money and save the City from paying interest.

Q. And Mr. Budd, you also know that it has been the policy or practice of Jersey City at different times when there has been a shortage of cash on hand to borrow money from the banks, hasn't it? A. Yes, sir; in anticipation of the collection of taxes.

Q. Yes, and to borrow money from banks—what form is followed when they borrow money from the banks? A. It depends on what the circumstances are.

Q. Do you give the bank a note? A. Circumstances alter the occasion. If we are borrowing for current expenses in anticipation of taxes it would be in a form of a common tax arrears bond. If it is to pay for school buildings we would issue a promissory note. For instance in building a new engine house it would be a temporary improvement bond.

Q. There are means of raising money temporarily by borrowing from the banks? A. I do not know of any.

Q. It has been done? A. Not to my knowledge. not without due evidence of indebtedness authorized by law.

Q. Interest on bonds would be due evidence

William J. Budd—Direct

of indebtedness authorized by law, would it not?

A. Interest on what kind of bonds. There are all kinds of bonds. If it was interest due on temporary improvement bonds for the improvement of a building that would require that the City put out another temporary improvement bond to pay the interest when it became due on the original bond.

10

Q. And the interest on a considerable number of these temporary loan bonds could have been paid in that way temporarily, could they not?
A. They have been paid.

Q. Certainly? A. Are you referring to temporary loan bonds or temporary improvement bonds?

Q. We will take temporary improvements first, how about temporary loan bonds, interest on them? A. Financial policy demands—

20

Q. I am not talking about good financial policy, Mr. Budd. I am talking about money being borrowed on these bonds? A. Not to my knowledge.

Q. What can be done? A. Make an appropriation.

Q. What can be done outside of that, can money be borrowed? A. To pay the interest on temporary loan bonds.

Q. Yes, to pay the interest.

MR. MILTON: Do you know of any law that authorized it. 30

MR. LANE: It has been done.

The Witness: We have never borrowed any money on temporary loan bonds to pay the interest on temporary loan bonds.

Q. I do not mean borrow on temporary loan bonds, I mean borrow on anything to pay the interest on temporary loan bonds? A. I do not know of any occurrence in which we borrowed by the issuance of temporary loan bonds. 40

William J. Budd—Direct

Q. To your knowledge, has the interest on temporary loan bonds ever been paid as it came due in any other manner than by making an appropriation for that purpose? A. Yes.

Q. When? A. In previous administrations, for instance before Commission Government and during about two years afterwards.

10 Q. Two years after Commission Government came in effect? A. Yes, to the best of my knowledge.

Q. And how was it paid at that time? A. By using the interest collected from the payment of delinquent taxes.

Q. Now, Mr. Budd, can you tell me why in the appropriation for the fiscal year ending November 30th, 1918 there was no appropriation made for interest on temporary loan bonds.

20

MR. MILTON: Objected to on the ground that it is immaterial irrelevant and incompetent.

A. There was no appropriation made.

Q. And likewise there was no appropriation for general bonds due. A. No.

MR. MILTON: I make the same objection.

30 A. That I cannot recall. No, there was not any.

Q. And also there was no appropriation made for temporary loan bonds due? A. No.

Q. Although there were some temporary loan bonds due at that time were there not?

MR. MILTON: Same objection.

A. That I cannot recall.

40 Q. Which were renewed? A. I say I cannot recall unless I look at the register we had yesterday.

William J. Budd—Direct

Q. Think, cannot you now answer the question?

A. No, not unless I looked at the record and if there were any they would be held by the Sinking Fund, and not presented for payment.

Q. And there would be no difficulty in having the same course pursued in reference to these temporary loan bonds included in this budget?

10

MR. MILTON: I make the same objection and also on the ground that it calls for a conclusion of law.

A. They included them in this budget.

Q. For what reason?

MR. MILTON: Same objection and also upon the ground it calls for a conclusion of law and the inclusion of the temporary loan bonds is justifiable upon the ground their inclusion is mandatory or an act of discretion.

20

A. As a matter of discretion for the Sinking Fund as far as I know to present them for payment.

Q. Who are the members of the Sinking Fund Commission? A. Mayor Hague, Commissioner Gannon, James C. Malone, Adolph Stein and Joseph C. Pay.

Q. By whom are they appointed? A. By a resolution of the Board of Commissioners.

30

Q. Of Jersey City? A. Yes, sir.

Q. Mr. Budd, there was no appropriation last year for Sinking Fund installments? A. No.

Q. And none for interest on temporary improvement bonds and promissory notes?

MR. MILTON: Same objection.

A. No.

Q. And none for abatement of taxes? A. No.

40

William J. Budd—Direct

Q. Or deficit on miscellaneous revenue?

MR. MILTON: Same objection.

A. No.

Q. Now, Mr. Budd, can you explain to me why the interest on the funded debt in the appropriation for the year ending November 30th, 1918
10 amounts to \$657,000. while the interest on the funded debt in this appropriation only amounts to \$140,000.

MR. MILTON: Objected to as immaterial irrelevant and incompetent.

A. The appropriation for last year was for the full fiscal year of twelve months and the appropriation in that budget of December was two
20 months' interest that had accrued on the first day of December from the prior six months down to December and also the interest due on the first day of January for the previous six months on bonds that were due.

Q. You say it included six months' interest that had accrued December 1st, and also six months' interest that would have accrued by January 1st?

A. Yes sir.

Q. That was in reality six months' interest?

A. Yes.

30 Q. \$41,106.25 was six months' interest that had accrued on a certain number of bond? A. Yes, sir.

Q. Due on the First of December? A. Yes, sir.

Q. \$100,696.17 was six months' interest accrued on a certain number bonds for a certain number of months? A. Yes.

Q. If I am wrong correct me? Looking at your interest schedule for the fiscal year 1917-1918
40 totalling \$657,975.62 there is included in that

William J. Budd—Cross.

six months' interest on each of the various bonds as they become due on a certain month in that fiscal year.

MR. MILTON: Objected to on the ground that it is immaterial, irrelevant and incompetent.

A. Yes, six months' interest on each of these bonds. 10

Q. And in this appropriation, this present budget, there is included six months' interest on the various bonds of which the interest days were either December 1st, 1918 or January 1st, 1919.

MR. MILTON: Same objection.

CROSS EXAMINATION BY MR. MILTON:

Q. Mr. Budd, you referred to the fact that during previous administrations and for the first or second years of Commission Government interest on temporary loan bonds had been paid out of interest of tax arrears, now, since 1916 which I think was the date of the passage of the first of the series of Pierson Acts, what disposition has been made of interest on tax arrears? A. It went into the surplus revenue account. 20

Q. And it is not available for the payment of interest on temporary loan bonds or any other items of expense? A. No. 30

Q. It must go into surplus revenue account? A. Yes.

MR. LANE: Commissioner Fagan is not here, and as I understand it is out on Public business. He was to be here this morning but has been detained. I had intended calling Commissioner Fagan but in view of the fact that the argument is on for to-morrow 40

and the testimony must be gotten out I will close without calling him.

COUNSEL DECLARED TESTIMONY CLOSED.

TO THE HONORABLE THE JUDGES OF THE SUPREME COURT OF THE STATE OF NEW JERSEY:

10 I, HERBERT W. KNIGHT, a Supreme Court Commissioner of the State of New Jersey, do respectfully certify that the foregoing depositions were taken before me at the times and places in the manner and under the stipulations and agreements therein set forth.

HERBERT W. KNIGHT,
Supreme Court Commissioner of New Jersey.

Decision of Supreme Court.

20 NEW JERSEY SUPREME COURT.

November Term, 1918.

SAMUEL W. GARRISON, *et al.*,

Prosecutors,

v.

30 MAYOR AND ALDERMEN OF JERSEY CITY, *et al.*,

Defendants.

Argued Nov. 14, 1918. Submitted Nov. 22, 1918.

Decided 1918.

ON CERTIORARI.

Before—Justices PARKER and MINTURN.

HARRY LANE, for the Prosecutors.

JOHN MILTON, for the Defendants.

40 PER CURIAM.

Decision of Supreme Court.

The urgency of an early decision in this case forbids the preparation of any elaborated opinion. The attack is on an assessment of taxes against property of the prosecutor for a period which happens to be the month of December, 1918. This is due to the statutory charge in the fiscal year of municipalities, first enacted in 1908 (P. L., p. 560) as to some but not all municipalities, and extended to first and second class cities in the current year (P. L. 1918, p. 901). The fiscal year of Jersey City before this enactment began December 1 and ended November 30. The charge in this fiscal year, making it begin January 1, and end December 31, necessarily caused a hiatus for which provision had to be made. In other cities it is more than a month; In Hoboken, eight months; in Newark, eleven months; and so on.

The city authorities, conceiving that a separate budget and tax assessment for this interregnum period was authorized and required by law, proceeded to make up a budget for the month of December and fix a tax rate to raise the needed funds according to that budget so as to start the fiscal year 1919 in the manner provided by Chapter 236 of the Laws of 1918, which took effect October 1, 1918, and Chapter 242 of the same year, which may be called the "New Budget Act," certain important provisions of which, comprised in sections 1, 12 and 13, take effect January 1, 1919.

The attack on the *ad interim* budget and tax assessment is on two main grounds; first, that there was no authority of law for a separate budget and rate for December, 1918, but that month should be added to and its budget levied with the budget assessment for 1919; and, secondly, if it be held otherwise, still the budget

Decision of Supreme Court.

and rate are illegal as containing illegal items and resulting in a rate beyond the limit set by law. On the other hand defendants, while supporting the budget and rate on the merits, claim that prosecutors are barred by laches.

We find no laches in the case.

10 It was not until October 11, 1918, that prosecutor learned of the assessment in question. The County Board had until October 1 to settle the rate. Prosecutors assert in their brief that the rate was actually fixed October 11, and this is not denied. If so, the application made within a month thereafter is not out of time. The city budget was advertised, it is true, in August, but states that the taxes to be raised were for the fiscal year ending December 31, 1918. A mis-
20 statement which, whether intentional or not, seems to have deceived many citizens into thinking that the rate of \$17.30 was for a year and not a month. We think laches is not made out.

This brings us to the claim that there was no legal authority to make up a separate budget for the interim of December, 1918.

We think this claim is not well founded. Had there been no new legislation, the orderly procedure in Jersey City would have been a duplicate of that in 1917; which was, that the budget for the fiscal year of December 1, 1917, to November 30, 1918, was made up long in advance, in August of 1917. In 1918, but for the change in the law, the budget made up in August would have been for the year December 1, 1918, to November 30, 1919, which embraced the month in question and eleven more. But these eleven months are removed from the budget by the fiscal year act, Chapter 238 of 1918; the budget for
30 those months is to be made up, by Chapter 242,
40

Decision of Supreme Court.

not later than February 9 and not earlier than December 1; and this provision is not effective until January 1, 1919, and leaves the old law in force until that date. The result seems to be that as to all parts of the old fiscal year that fall in the calendar year 1919, Chapter 242 is operative; and as to all parts in the calendar year 1918 the former law is operative and a budget is properly made up thereunder for the remainder of 1918. Such has apparently been the practice in other municipalities and we think correctly. It results in two budgets in a calendar year but the alternative is between this and a budget for more than a year. We think that when Section 4 (3) of the fiscal year act, Chapter 238, says "In the budget and tax levy next following the passage and approval of this act" the legislature meant a budget under the law in effect at the time, and that there is nothing in Chapter 238 or in any other legislation called to our attention, which does more than change the period for which the next budget is to provide.

The points made with respect to inclusion of the proper items may best be treated by quoting the fourth section just cited and stating our opinion of the meaning of the words and clauses pertinent to the controversy.

The section reads as follows:

"In the budget and tax levy next following the passage and approval of this act, any municipality or county whose fiscal year or the period for which appropriations are made is altered by this act, is authorized to make appropriations for local purposes other than schools in the case of municipalities and for county purposes in the case of counties for the period between the close of the current fiscal year * * * and the thirty-first day

Decision of Supreme Court.

10 of December following, and a further appropriation for general purposes in such amount as the governing body of such municipality or county may determine, and to raise by taxation such moneys, as, with the revenues derived or to be derived from other sources, will meet such appropriations; provided, that the amount to be raised by taxation for local purposes other than schools in the case of municipalities and for county purposes in the case of counties shall not be such as to cause the rate in the tax levy for such local or county purposes to exceed the rate for like purposes in the next preceding tax levy."

The questions raised are these:

What is meant by "*local purposes*"?

What by "*general purposes*"?

20 What by "*rate*" as applied to the interim: does it mean in this case a rate for local purposes for one month, *equal* to the rate for the entire preceding fiscal year, or such a rate as if multiplied by twelve, would not exceed that rate?

Without undertaking to give definitions of these terms, we state our view of their meaning as applied to the case

30 We think "*local purposes*" means the ordinary expenses of daily administration of the city government, and institutions, such as salaries, rents, supplies, and matters of similar character for which constant provision must be made:

40 That "*general purposes*" refers to obligations extra to ordinary running expenses, and include interest falling due on bonds or other indebtedness, principal of obligations maturing within the interim period, and any provision for sinking fund that would have had to be made within the month of December if the law had not been changed.

Decision of Supreme Court.

The term "county purposes" seems to embrace all legitimate components of a county budget, but is controlled by what we shall have to say in a moment about the rate.

On this subject it seems plain to us that the intent of the legislature in providing the change of fiscal year and for the interim was to enable the cities and counties to raise what was needed for ordinary current expenses during the interim, and decidedly not to put into their hands a weapon of oppression to the taxpayers. In making this provision it was considered that the criterion of what would be needed for local or county purposes in an interim was a proportionate part of what was needed in the preceding fiscal year for similar purposes. To say that it was intended that the city or county could spend in an interim, whether larger or shorter, whether one month as in Jersey City or eight as in Hoboken or eleven as in Newark, as much as was spent in the preceding fiscal year, savors to us of absurdity. This construction enables the city of Jersey City and the county of Hudson to take advantage of a preceding annual rate to pay in one month as much as 85 per cent of the preceding year's outlay, some of which perhaps goes in reduction of the 1919 budget but much of which is purely extra expenditure. In two years and a month the taxpayers will have paid nearly three years' taxes. This could not have been intended. On the contrary the "rate" for December, 1918, is not to exceed the "rate" attributable to December, 1917, i. e., an ordinary month's local expenditure. This is emphasized by the discretion given to raise money for general purposes, which is not limited. The county is a party, and its appropriations for a road, a hospital for the insane, and so on, are

Decision of Supreme Court.

legal only in so far as they do not cause the county tax rate to exceed $1/12$ of that for the preceding year.

These considerations seem dispositive of substantially all the items challenged except the state road tax and state school tax.

10 The road tax (P. L. 1917, p. 41; 1918, p. 507) is an annual tax collectible in municipalities by the machinery for collecting other taxes, and payable to the county collector, originally not later than December 22, afterwards (1918 act) by December 15.

The road tax for 1917 was collected in Jersey City with the bills for taxes due December 20, 1917.

20 The road tax for 1919 will be assessed and collected by the machinery of the legislation of 1918.

If the road tax for 1918 is not collectible by Jersey City with the one month budget, it will not be collected at all. But for the change in fiscal year, there would be no question about it. If prosecutors are right, the state will get no road tax for 1918. We think the ad interim budget properly includes it.

30 The same result is reached as to the State School Tax. This tax, an annual one (C. S. 4780, pars. 177, 178), due the State Treasurer January 20, 1918, was collected with local taxes due December 20, 1917. By the law, the city collector must pay the current school tax for Jersey City to the county collector on or before December 22, 1918, and the county collector pass it on to the State Treasurer by January 20, 1919 (sec. 178). How is this to be done if it is not assessed and collected with the ad interim budget? We

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Decision of Supreme Court.

have held that the pre-existing machinery is operative until the new acts take effect on January 1, 1919. The fiscal year act is not to the contrary in respect to this school tax. It does not mention it, and does mention local school appropriations. The school law is not affected; the state school tax must be annually raised, and as in case of the road tax if not raised as part of the ad interim levy it will not be raised at all. 10

The net result is that in some respects the budget and tax rate are illegal and to the extent of such illegality so far as they affect the prosecutors should be set aside.

The present writ affects prosecutor's taxes only and not the entire levy. Application was made for a writ to bring up the entire levy and ordinance. Allocatur to that writ is still reserved, but the apparent illegalities are of such consequence that a general writ may be advisable unless the city and county authorities are disposed to revise the budgets and rates in accordance with the foregoing views. 20

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Rule for Judgment.
NEW JERSEY SUPREME COURT,

SAMUEL W. GARRISON, <i>et al.</i>, <i>Prosecutors,</i> <i>v.</i> 10 THE MAYOR AND ALDERMEN OF JERSEY CITY, <i>et al.</i>, <i>Respondents.</i>	}	On Certiorari.
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The Court having inspected the assessment of taxes, and the proceedings therefor and thereon returned with the writ of certiorari in this cause, and having examined the reasons assigned for setting aside said assessment of taxes, and having heard the argument of counsel thereon:

20 And it appearing to the satisfaction of the Court that said assessment of taxes is at a rate higher than is authorized by the law under which the same was made and levied:

It is ordered and adjudged that the tax assessment on the property of the prosecutors returned with the writ of certiorari in this cause, levied as of the first day of October, 1918, be and the same is hereby set aside, vacated and for nothing

30 holden in the following particulars; to wit:

FIRST: So far as said assessment includes a rate of taxation for local purposes of Jersey City, excess of one-twelfth of the annual rate for such purposes for the fiscal year beginning December 1, 1917, and ending November 30, 1918.

SECOND: The appropriations of said city, for general purposes are adjudged to be confined to obligations of said city, extra to ordinary running

Rule for Judgment.

expenses, including interest falling due on bonds or other indebtedness during the month of December, 1918, principal of obligations maturing within said month, and any provision for sinking fund which would have been required to be made within said month under the law in force, January 1, 1918. So far as said tax assessment against the property of the prosecutors for so-called general purposes of said city, exceeds the pro rata part of the total of the above sum, the same is set aside. **10**

THIRD: So far as said assessment includes a rate of taxation for County purposes in excess of one-twelfth of the annual rate of the tax assessment for such purposes against the said property now owned by the prosecutors, for the fiscal year beginning December 1, 1917, and ending November 30, 1918, said assessment is set aside. **20**

FOURTH: So far as prosecutors' share of the tax for general purposes of the County of Hudson exceeds their pro rata of the amount, in addition to ordinary running expenses, required by said County, including interest falling due on bonds or other indebtedness during the month of December, 1918, principal of obligations maturing within said month, and any provision for sinking fund which would have been required to be made within said month under the law in force January 1, 1918, the assessment against the said property of prosecutors is further set aside. The appropriations for an insane asylum, repairs to Newark Turnpike, expenditures of County departments, deficiencies and the like are adjudged not to fall within the term "general purposes" as intended by Chapter 238 of the Laws of 1918. **30**

FIFTH: Said assessment is further set aside as to prosecutors' pro rata of any other appro- **40**

Rule for Judgment.

priations within the City or County, on which said assessment is based, which do not fall within the classification of "local purposes", "County purposes" as equivalent to ordinary running expenses, or "general purposes" as herein defined; except with respect to the appropriations for local school purposes, State school taxes and State road tax; in respect to which, and except as above set aside, the said assessment is affirmed.

And it is further ordered that either party have leave to apply to this Court, for further directions as to the proceedings for carrying this judgment into effect.

And it is further ordered that the defendants, The Mayor and Aldermen of Jersey City, and the Board of Chosen Freeholders of Hudson County, pay the costs of prosecutors herein, as taxed.

Let the above Rule be entered.

CHARLES W. PARKER,

J. S. C.,

For the Court.

Entered December 6th, 1918.

On Motion of

HARRY LANE,

FRANK J. HIGGINS,

Attorneys for Prosecutors.

Notice of Appeal.
NEW JERSEY SUPREME COURT.

SAMUEL W. GARRISON, <i>et al.</i>, <i>Prosecutors-Respondents,</i> <i>v.</i> THE MAYOR AND ALDERMEN OF JERSEY CITY, <i>et al.</i>, <i>Respondents-Appellants.</i>	}	On Certiorari.
		10

Gentlemen :

Please take notice that the respondents, The Mayor and Aldermen of Jersey City, et al., appeal to the Court of Errors and Appeals of New Jersey in the last resort in all causes from the whole of the judgment entered in this cause.

Dated December 6, 1918.

Yours respectfully,

JOHN MILTON,
 Attorney for Respondent,
 The Mayor and Aldermen of Jersey City.

JOHN J. FALLON,
 Attorney for Respondent,
 County of Hudson.

To

HARRY LANE
 and

FRANK J. HIGGINS,
 Attorneys for Prosecutors.

Service of within Notice of Appeal acknowledged this 6th day of December, 1918.

HARRY LANE,
 FRANK J. HIGGINS,
 Attorneys for Prosecutors.

Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS

10	SAMUEL W. GARRISON, <i>et al.</i>, <i>Prosecutors-Respondents</i>, <i>v.</i> THE MAYOR AND ALDERMEN OF JERSEY CITY, <i>Respondents-Appellants</i>.	On Appeal from Su- preme Court.
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GENTLEMEN :

20 The following are the grounds upon which the Respondents-Appellants appeal to the Court of Errors and Appeals of the State of New Jersey, in the last resort in all causes, from the judgment of the New Jersey Supreme Court:

1. Said judgment erroneously and improperly ordered and adjudged that the tax assessment on the property of the Prosecutors', returned with the writ of certiorari in this cause and levied as the 1st day of October, 1918, should be set aside, vacated and for nothing holden in certain particulars.

30 2. Said judgment erroneously ordered and adjudged that said tax assessment should be set aside, vacated and for nothing holden so far as said assessment included a rate of taxation for local purposes of Jersey City in excess of one-twelfth of the annual rate for such purposes for the fiscal year beginning December 1st, 1917, and ending November 30th, 1918.

3. Said judgment erroneously ordered and adjudged that the appropriations of said City for General Purposes should be confined to ob-

Grounds of Appeal.

ligations of said City extra to ordinary running expenses, including interest falling due on bonds or other indebtedness during the month of December, 1918, principal of obligations maturing within the said month and any provision for Sinking Fund which would have been required to be made within said month under the law in force January 1st, 1918, and that so far as said tax assessment against Prosecutors' property for so-called "General Purposes" of the City exceeded or exceeds the pro rata part of the total of the above sum, the same was erroneously and improperly set aside. 10

4. Said judgment erroneously and improperly orders and adjudges that so far as said assessment included or includes a rate of taxation for County purposes in excess of one-twelfth of the annual rate of the tax assessment for such purposes against the said property now owned by the Prosecutors for the fiscal year beginning December 1st, 1917, and ending November 30th, 1918, the said assessment should be set aside. 20

5. The said judgment erroneously and improperly orders and adjudges that so far as Prosecutors' share of the tax for General Purposes of the County of Hudson exceeds their pro rata of the amount, in addition to ordinary running expenses required by said County, including interest falling due on bonds or other indebtedness during the month of December, 1918, principal of obligations maturing within said month, and any provision for Sinking Fund which would have been required to be made within said month under the law in force January 1st, 1918, the assessment against the said property of Prosecutors should be further set aside; and also erroneously and improperly orders and adjudges the appropriations for Insane Asylum, repairs to 30 40

Grounds of Appeal.

Newark Turnpike, expenditures of County Department, deficiencies and the like, do not fall within the term "General Purposes" as intended by Chapter 238, P. L. 1918.

10 6. Said judgment further erroneously and improperly orders and adjudges that said assessment is further set aside as to Prosecutors' pro rata of any other appropriations within the City or County on which said assessment is based which do not fall within the classification of "Local Purposes," "County Purposes" as equivalent to ordinary running expenses, or "General Purposes" as in said judgment defined.

7. Said judgment in divers other respects is illegal and erroneous.

Dated, December 6th, 1918.

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JOHN MILTON,
Attorney for Respondent-Appellant,
The Mayor and Aldermen of Jersey City.

JOHN J. FALLON,
Attorney for Respondent-Appellant,
County of Hudson.

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Notice of Argument.**NEW JERSEY COURT OF ERRORS AND APPEALS**

SAMUEL W. GARRISON, <i>et al.</i>, <i>Prosecutors-Respondents,</i> <i>v.</i> THE MAYOR AND ALDERMEN OF JERSEY CITY, <i>et al.</i>, <i>Respondents-Appellants.</i>	}	On Appeal from Su- preme Court.	10
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Gentlemen :

Please take notice that the above entitled cause will be brought on for argument before the above entitled Court, at the State House in the City of Trenton, New Jersey, on Wednesday, December 11th, 1918, at 10:30 A. M.

Dated, December 6th, 1918.

Yours respectfully,

JOHN MILTON,
Attorney for Appellant,
The Mayor and Aldermen of Jersey City.
JOHN J. FALLON,
Attorney for Appellant,
County of Hudson.

To

HARRY LANE
and

FRANK J. HIGGINS,
Attorneys for Respondents.

We hereby acknowledge service of the above notice of argument and consent that the case may be heard and the argument had before the above entitled Court on Wednesday, December

Notice of Argument.

11th, 1918, provided there will be no advantage taken if the brief for the Prosecutors-Respondents is not printed because of the inability of printers to get the brief out for use on said argument, and also provided there will be no necessity for any further notice of argument on any cross-appeal or appeal taken by the Prosecutors-Respondents to be given and due service of notice and grounds of cross-appeal or appeal is considered as having been made by Prosecutors-Respondents on all parties and that both appeals will be argued at the same time and that no objection is made by the Attorney General or any other party to the arguing of both appeals at said time on the merits.

HARRY LANE,

FRANK J. HIGGINS,

Attorneys for Prosecutors-Respondents.

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Notice of Appeal and Cross-Appeal.**NEW JERSEY SUPREME COURT.**

SAMUEL W. GARRISON, <i>et al.</i>, <i>Prosecutors-Respondents</i> <i>Appellants</i>, <i>v.</i> MAYOR AND ALDERMEN OF JERSEY CITY, <i>et al.</i>, <i>Respondents-Appellants-</i> <i>Respondents.</i>	}	On Appeal and Cross- Appeal from Supreme Court.	10
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Sirs :

Take notice that the Prosecutors-Respondents-Appellants, Samuel W. Garrison, et al., appeal to the Court of Errors and Appeals of the State of New Jersey of the last resort in all causes, from the whole of the judgment of the New Jersey Supreme Court, with the exception of such parts thereof as set aside the tax assessment on property of the Prosecutors-Respondents-Appellants in certain particulars.

Dated December 6, 1918.

HARRY LANE,
FRANK J. HIGGINS,
Attorneys of Prosecutors-Respondents-Appellants.

To

Hon. JOHN W. WESCOTT,
Attorney-General,
For State of New Jersey—Respondent.
JOHN MILTON, Esq.,
Attorney for Respondent-Appellant-
Respondent, Mayor and Aldermen
of Jersey City.

JOHN J. FALLON, Esq.,
Attorney for Respondent-Appellant-
Respondent, County of Hudson.

Grounds of Appeal and Cross-Appeal.
NEW JERSEY COURT OF ERRORS AND APPEALS

10	SAMUEL W. GARRISON, <i>et al.</i> , <i>Prosecutors-Respondents</i> <i>Appellants,</i> <i>v.</i> MAYOR AND ALDERMEN OF JERSEY CITY, <i>et al.</i> , <i>Respondents-Appellants-</i> <i>Respondents.</i>	} On Appeal and Cross- Appeal from Supreme Court.
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Sirs:

20 The following are the grounds upon which the Prosecutors-Respondents-Appellants appeal to the Court of Errors and Appeals of the State of New Jersey of the last resort in all causes, from the judgment of the New Jersey Supreme Court; with the exception of such parts thereof as set aside the tax assessment on property of the Prosecutors-Respondents-Appellants in certain particulars:

30 1. Said judgment erroneously and improperly ordered and adjudged that the said assessment of taxes should be set aside and vacated and for nothing holden in certain particulars only.

2. Said judgment is erroneous in that it did not set aside and vacate the entire tax assessment.

3. Said judgment erroneously ordered and adjudged that the State School Tax included in said assessment should be affirmed.

4. Said judgment erroneously ordered and ad-

Grounds of Appeal and Cross-Appeal.

judged that the State Road Tax included in said assessment should be affirmed.

5. Said judgment erroneously ordered and adjudged that the pro rata portion of said tax assessment for appropriations for local school purposes should be affirmed.

6. Said judgment erroneously ordered and adjudged that the said tax assessment should be affirmed, except as set aside thereby. 10

7. Said judgment is erroneous in that it did not set aside the State School Tax, the State Road Tax, and the pro rata portion of said tax assessment for appropriations for local school purposes.

8. Said judgment is erroneous in that the term "general purposes" is not defined with sufficient particularity so as to exclude the raising of revenue by the said tax assessment for the payment of the several items appearing illegally in the Budgets of Jersey City and Hudson County, such as Police Salary Increase Temporary Loan Bonds; Temporary Loan Bonds payable on demand; some or all of which are held or controlled by the Sinking Fund Commission of Jersey City; and also permits the inclusion of the Sinking Fund Appropriations for both the City and County which would have been required to be made within the month of December, 1918 under the law in force January 1, 1918, whereas, at the most, only one-twelfth of said Sinking Fund could be included. 20 30

9. Said judgment is erroneous in that it ordered and adjudged that there could be a tax assessment on the property of the Prosecutors-Respondents-Appellants which becomes a lien on December 20, 1918, for local purposes, of Jersey 40

Grounds of Appeal and Cross-Appeal.

City; for County purposes; for general purposes as defined therein; for appropriations for local school purposes; for State Road Tax and for State School Tax.

10. Said judgment is erroneous in that it does not strike out all of the items and appropriations appearing illegally in the Taxing Ordinance and Budgets of the City and County.

11. Said judgment is in divers other respects illegal and erroneous.

Dated December 7, 1918.

HARRY LANE,
FRANK J. HIGGINS,
Attorneys for Prosecutors,
Respondents-Appellants.

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Notice of Argument.**NEW JERSEY COURT OF ERRORS AND APPEALS**

SAMUEL W. GARRISON, <i>et al.</i>, <i>Prosecutors-Appellants</i>, <i>v.</i> MAYOR AND ALDERMEN OF JERSEY CITY, <i>et al.</i>, <i>Appellants-Respondents</i>.	}	On Appeal.
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Sirs:

Please take notice of the argument of the above entitled cause, before the above entitled Court, at the State House, City of Trenton, on Wednesday, the 11th day of December, A. D. 1918, at ten thirty o'clock in the forenoon.

Dated December 7th, 1918.

20

HARRY LANE,
FRANK J. HIGGINS,
Attorneys for Prosecutors-Appellants.

To

Hon. JOHN W. WESCOTT,
Attorney General.
JOHN MILTON, Esq.,
Attorney for Mayor and Aldermen
of Jersey City.

JOHN J. FALLON, Esq.,
Attorney for County of Hudson.

30**40**

Exhibit P-1.

OFFICIAL.

CITY OF JERSEY CITY, N. J.

PUBLIC NOTICE.

10 Notice is hereby given that the Board of Commissioners of the City of Jersey City, at a meeting held July 24th, 1918, approved the following budget of municipal appropriations for the term ending December 31st, 1918, and have fixed Tuesday, August 6th, 1918, at two o'clock p. m., and the Assembly Chamber, City Hall, Jersey City, N. J., as the time and place when and where objections to such budget may be presented according to and as provided by law.

An ordinance relating to taxes for the fiscal year ending the 31st day of December, nineteen hundred and eighteen.

Be it ordained by the Board of Commissioners of the City of Jersey City, N. J.:

Section 1—That there shall be assessed, raised by taxation and collected for the fiscal year ending the thirty-first day of December, nineteen hundred and eighteen, the sum of one million nine hundred and fifty-five thousand nine hundred and ninety-five and 79-100ths (\$1,955,995.79) dollars for the purpose of meeting the appropriations set forth in the following statement of resources and appropriations for such fiscal year.

RESOURCES.

20

Surplus Revenues Appropriated	NONE
Miscellaneous Revenues	NONE
Amount to be Raised by Taxes	\$1,955,995.79

Total\$1,955,995.79

Section 2—That in addition to the amount to be raised by taxes as above set forth, there shall be assessed, raised by taxation and collected such sums as may be appropriated by the proper State and County officials, and chargeable against the city of Jersey City for State and County purposes.

Section 3—This ordinance shall take effect Tuesday, August 6th, 1918.

APPROPRIATIONS.

DEPARTMENT OF PUBLIC AFFAIRS.

30

	Appropriations to Dec. 31st, 1918	Last Approp- riations.
Salaries:		
Mayor	\$458.33	\$5,500.00
Deputy to Mayor	333.33	4,000.00
Stenographer	166.66	1,500.00
Claims:		
Printing, Stationery and Sup- plies	125.00	800.00

MAIN HOSPITAL.

Administrative:		
Salaries	1,308.00	13,220.00
Professional Care of Patients:		
Salaries	7,848.00	72,580.00

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Exhibit P-1.

Services of Internes	300.00	8,000.00	
Ambulance Corps:			
Salaries	300.00	2,460.00	
Housekeeping:			
Salaries	2,895.00	31,440.00	
Kitchen:			
Salaries	932.00	11,190.00	
Laundry:			
Salaries	1,244.34	10,980.00	
Power House:			
Salaries	1,808.32	11,579.70	
Department Expenses:			
Salaries	575.00	2,320.00	10
Dental Clinic:			
Salaries	600.00	10,200.00	
	\$17,810.66	\$174,469.70	
Administrative Expenses:			
Printing, Stationery, Office Ex-			
penses, Telephone	300.00	3,500.00	
Professional Care of Patients:			
Alcohol, X-Ray Supplies, Train-			
ing School Commencement,			
Medicines and Drugs, Misc.	750.00	3,300.00	
Department Expenses:			
Ambulance, Housekeeping, Kit-			
chen and Laundry	1,800.00	18,363.00	20
Steward's Department:			
Bread, Milk, Groceries, Butter,			
Eggs, Fruit, Vegetables,			
Meat, etc.	8,835.00	57,941.00	
General House and Property Ex-			
penses:			
Light, Fuel, Rent, Uniforms,			
Cleaning, Ice, Oil, Misc.	3,600.00	28,905.00	
	\$15,285.00	\$112,009.00	
Total for Main Hospital ..	\$33,095.66	\$286,478.70	

ISOLATION HOSPITAL.

Administrative Expenses:			
Salaries	1,200.00	8,740.00	
Light, Fuel, Ice, Meat, Fish,			
Milk, Bread, Misc. Supplies..	3,500.00	8,161.16	30
	\$4,700.00	\$16,901.16	

HEALTH BUREAU.

Administrative:			
Salaries	12,000.00	114,120.00	
Division of Communicable Diseases:			
Vaccine, Antitoxin, Disinfect-			
ants, NeoSalcarsan, Misc.,			
Printing, Stationery, Medical			
Supplies, Carfare	1,500.00	11,100.00	
Parochial School Expenses:			
Printing, Stationery, Child Hy-			
giene, Dental Clinic, Plumb-			
ing, Sanitary, Food Inspec-			
tion, Licenses, Carfare, Misc.	2,000.00	10,980.00	40

Exhibit P-1.

Division of Milk Inspection:		
Supplies, County Inspectors, Railway Fare, Hire of Vehicles, Express	1,000.00	7,120.00
Chemical Laboratory:		
Printing, Stationery, Supplies	1,000.00	4,500.00
Division of Sanitation, Food, Drugs:		
Maintenance of Scow	200.00	400.00
Division of Child Hygiene:		
Equipping and Maintaining Three New Stations	750.00	None
10 Total for Health Bureau..	\$18,450.00	\$153,620.00
BUREAU OF MUNICIPAL RELIEF.		
Administrative:		
Salaries	957.00	7,240.00
Maintenance and Supplies:		
Relief of Outdoor Poor	1,200.00	13,000.00
Office Supplies, Printing and Stationery	50.00	300.00
Transportation of Inmates....	100.00	250.00
Auto Maintenance	100.00	None
Total for Bureau of Municipal Relief	\$2,407.00	\$21,240.00
20 BUILDING INSPECTION BUREAU.		
Administrative:		
Salaries	\$1,483.00	\$17,800.00
Printing, Stationery and Supplies	100.00	1,000.00
Total for Building Inspection Bureau	\$1,583.00	\$19,300.00
Total for Department of Public Affairs	\$61,318.98	\$502,989.86
DEPARTMENT OF REVENUE AND FINANCE.		
Executive Office:		
Salaries	\$924.98	\$14,300.00
Departmental Expenses:		
Printing, Stationery, Misc. Supplies	5,000.00	25,000.00
Municipal Publicity and Advertising	20,000.00	None
	\$25,924.98	\$39,300.00
CITY COLLECTOR'S OFFICE.		
Salaries	\$2,960.62	\$24,125.00
BUREAU OF TAX ASSESSMENTS.		
Salaries	4,130.79	43,020.00
Railroad Tax Litigation, Real Estate and Personal Property Appraisal	35,000.00	None
40	\$39,130.79	\$43,020.00

Exhibit P-1.

COMPTROLLER'S OFFICE.

Salaries	1,374.94	13,400.00
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DIVISION OF AUDITOR OF SCHOOL DISTRICT.

Salaries	350.00	4,200.00
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TREASURER'S OFFICE.

Salaries	804.14	9,150.00
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Total for Department of

Revenue and Finance ..	\$69,620.49	\$133,195.00
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PURCHASING DEPARTMENT.

Salaries	\$1,113.68	\$10,961.00
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Claims:

Printing, Stationery and Sup- plies	100.00	500.00
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	\$1,213.68	\$11,461.00
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LEGAL AND JUDICIAL—DISTRICT COURTS.

Salaries	\$1,520.62	\$18,250.00
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Claims:

Printing, Stationery and Sup- plies	250.00	800.00
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	\$1,770.62	\$19,050.00
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LAW DEPARTMENT.

Salaries	\$3,229.10	26,475.00
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Legal Expenses:

Services rendered to all de- partments	2,000.00	10,000.00
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	\$5,229.10	\$36,475.00
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Total Legal and Judicial..

	\$6,999.72	\$55,525.00
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SINKING FUND COMMISSION:

Salaries	\$333.33	None
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Claims — Printing, Stationery and Supplies	100.00	None
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	\$433.33	None
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LABOR BUREAU:

Salaries	\$450.00	\$6,300.00
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Claims — Printing, Stationery and Supplies	100.00	None
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	\$550.00	\$6,300.00
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JITNEY TRAFFIC BUREAU:

Salaries	\$725.00	\$4,740.00
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Claims—Printing and Station- ery	200.00	None
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	\$925.00	\$4,740.00
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ZONING COMMISSION:

Salaries	\$208.32	None
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Exhibit P-1.

FIXED CHARGES.

DEBT SERVICE:

	Interest on Funded Debt.....	\$140,611.64	\$657,975.62
	Interest on Temporary Loans (Account Current Expenses)	25,000.00	None
	General Bonds Due	80,539.00	None
	Temporary Loan Bonds Due..	674,323.12	None
	Temporary Improvement Bonds Due	155,218.15	None
10	Sinking Fund Installments, as per Certificate	240,910.72	None
	Interest on Temporary Im- provement Bonds and Prom- issory Notes	125,000.00	None
	MISCELLANEOUS:		
	Abatement of Taxes, Year 1918	\$30,000.00	None
	Deficit Miscellaneous Revenue, Year 1918	25,000.00	None
	Contingent Expenses under Chapter 192, Section 5, P. L. 1917	10,000.00	70,000.00
		\$1,506,602.63	\$727,975.62

CITY CLERK'S OFFICE.

Salaries:

20	City Clerk	\$416.66	\$5,000.00
	Acting City Clerk	416.66	None
	City Marshal	None	1,500.00
	Asst. and Clerks	3,000.00	19,791.00
		\$3,833.32	\$26,291.00

Claims:

	Printing, Stationery and Sup- plies	400.00	5,000.00
	Advertising Notice Primary and General Election	None	4,000.00
	Printing Minutes	300.00	4,000.00
	War Emergency Fund	1,000.00	None
		\$1,700.00	\$13,000.00

30

Total for City Clerk \$5,533.32

DEPARTMENT OF STREETS AND PUBLIC IMPROVE-
MENTS.

Executive Office:

Salaries

\$1,191.65 \$15,301.00

Departmental Expenses:

Printing, Stationery, Office
Supplies, etc.

125.00 1,500.00

\$1,316.65 \$16,801.00

Engineering Bureau:

Salaries

\$3,910.00 \$35,302.00

Bureau Expenses—Supplies and
Maintenance

300.00 3,800.00

40

\$4,210.00 \$39,102.00

Exhibit P-1.

Bureau Street Lighting:			
Salaries	\$310.00	\$3,000.00	
Bureau Expenses—Printing and Stationery	125.00	750.00	
Street Lighting	14,326.67	180,524.70	
	\$14,761.67	\$184,274.70	
Removal of Ashes and Garbage:			
Salaries	\$825.00	\$7,460.00	
Claims—Removal of Ashes and Garbage (contract) and incidentals	10,833.33	125,000.00	10
	\$11,658.33	\$132,460.00	
Bureau of Sewers and Basins:			
Salaries and Wages	\$5,302.00	\$40,159.00	
Bureau Expenses—Repairs, Supplies, Outfits	300.00	2,500.00	
	\$5,602.00	42,659.00	
Bureau Street Cleaning:			
Salaries and Wages	\$35,421.63	\$337,023.75	
Bureau Expenses—Repairs and Supplies, Light, Fuel, Feed, Insurance, Miscellaneous ...	8,000.00	65,210.00	
	\$43,421.63	\$402,233.75	
Bureau of Assessments:			
Salaries	\$770.83	\$9,250.00	22
Bureau Expenses	25.00	125.00	
	\$795.83	\$9,375.00	
Bureau of Sidewalks:			
Salaries	\$130.00	\$900.00	
Bureau Expenses—Printing, Stationery, Incidentals	20.00	200.00	
	\$150.00	\$1,100.00	
Bureau of Street Repairs:			
Salaries	\$4,664.00	None	
Total for Department of Streets and Public Improvements	\$86,580.11	\$828,005.45	30
DEPARTMENT OF PUBLIC SAFETY.			
Executive Office:			
Salaries	\$1,333.32	\$13,000.00	
Departmental Claims:			
Incidental Expenses of Director	1,400.00	5,000.00	
	\$2,733.32	\$18,000.00	
Police Department:			
Salaries	\$103,200.00	\$903,080.00	
Pensions	7,800.00	84,000.00	
Claims, Supplies, Upkeep	6,000.00	55,000.00	
Detention Home for Juveniles	125.00	1,500.00	
	\$117,125.00	\$1,061,580.00	40

Exhibit P-1.

Criminal Courts:

Salaries	\$1,766.66	\$13,600.00
Printing, Stationery and Supplies	100.00	500.00
	\$1,866.66	\$14,100.00

Total for Police Department

	\$118,991.66	\$1,075,680.00
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Fire Department:

Salaries	54,149.97	491,550.00
Pensions	341.64	4,150.00
Claims, Supplies, etc.	6,000.00	65,250.00

Total for Fire Department

	\$62,358.27	\$575,050.00
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Bureau of Scales, Weights and Measures:

Salaries	525.00	3,600.00
Claims, Printing, Stationery and Supplies	150.00	600.00
	\$675.00	\$4,200.00

Excise Bureau:

Salaries	\$250.00	None
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Total for Department of Public Safety

	\$183,141.59	\$1,640,830.00
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DEPARTMENT OF PARKS AND PUBLIC PROPERTY.

EXECUTIVE OFFICE.

Salaries	\$1,374.97	\$13,280.00
Departmental Expenses:		
Printing, Stationery, Supplies	60.00	600.00
	\$1,434.97	\$13,880.00

BUREAU SHADE TREES, PARKS AND PLAYGROUNDS.

Salaries and Wages	8,269.00	72,555.00
Bureau Expenses:		
Cart and Wagon Hire	375.00	4,060.00
Upkeep of Lawns, Courts, Ball Fields, Parks, Playgrounds..	2,085.00	17,840.00
Rent of Union Street Repair Shop	15.00	180.00
	\$10,744.00	\$94,635.00

BUREAU OF PUBLIC BATHS.

Salaries:

Supt. of Baths	125.00	1,500.00
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Fourteenth Street Bath.

Firemen and Attendants	625.00	6,730.00
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Maintenance:

Light, Power, Fuel, Repairs, Supplies	200.00	2,150.00
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*Exhibit P-1.**Coles Street Bath.*

Salaries:		
Firemen and Attendants	500.00	5,720.00
Maintenance:		
Light, Power, Fuel, Repairs, Supplies	300.00	3,940.00
	<u>\$1,750.00</u>	<u>\$19,200.00</u>

CITY HALL BUILDING BUREAU.

Salaries	\$2,000.00	\$23,705.00	10
Claims:			
Light, Power and Fuel	750.00	9,000.00	
Repairs, Supplies and Snow Removal	600.00	6,800.00	
Telephone Switchboard (con- tract)	100.00	600.00	
	<u>\$3,450.00</u>	<u>\$40,105.00</u>	

BUREAU OF PUBLIC BUILDINGS.

Salaries and Wages	2,000.00	21,423.00	
Bureau Expenses:			
Misc. Supplies and Materials, All Buildings	200.00	2,000.00	
	<u>\$2,200.00</u>	<u>\$23,423.00</u>	20

CITY HOSPITAL BUILDING.

Expenses:			
Insurance	\$100.00	\$1,925.00	
Repairs	375.00	7,500.00	
	<u>\$475.00</u>	<u>\$6,425.00</u>	

ISOLATION HOSPITAL BUILDING.

Expenses:			
Insurance	\$45.00	\$120.00	
Repairs	25.00	200.00	
	<u>\$70.00</u>	<u>\$320.00</u>	30

FREE PUBLIC LIBRARY.

Expenses:			
Insurance	\$100.00	\$450.00	
Repairs	100.00	1,000.00	
	<u>\$200.00</u>	<u>\$1,450.00</u>	

CITY SCOW.

Expenses:			
Repairs	10.00	25.00	

POORMASTER'S BUILDING.

Expenses:			
Repairs	15.00	150.00	40

FIRE DEPARTMENT BUILDINGS.

Expenses:		
Insurance	\$500.00	\$1,125.00
Repairs	350.00	3,000.00
	\$850.00	\$4,125.00
Police Department Buildings:		
Expenses—Repairs	\$300.00	\$3,500.00
Buildings Rented—Expenses:		
Second District Court	100.00	1,200.00
Signal Corps Quarters	100.00	1,200.00
Catholic Club, Jersey Avenue..	292.00	None
Democratic Club, Mercer St. ..	100.00	None
	\$502.00	\$2,400.00
Fourth Regiment Armory:		
Salaries	150.00	1,800.00
Expenses — Light, Fuel and Power	600.00	2,900.00
	\$750.00	\$4700.00
Miscellaneous:		
Free Public Library	\$9,000.00	\$84,740.00
Bureau Public Utilities:		
Salaries	927.65	6,600.00
Expenses — Repairs, Printing, Stationery and Supplies	100.00	250.00
	\$1,027.65	\$6,850.00
Total for Department of Parks and Public Property	\$32,368.62	\$305,934.00

Ordered by the Board of Commissioners of Jersey City in accordance with section 3 of Chapter 242, Laws of 1918.

DANIEL O'REGAN, Acting City Clerk.

Exhibit P-2.

NOTICE OF PUBLIC HEARING.

Notice is hereby given by Board of Chosen Freeholders of County of Hudson, that Thursday, July 25, 1918, at 10 o'clock a. m., at the Court House, Jersey City, has been fixed as the time and place where objections may be made by any taxpayer of the county to a resolution relating to taxes for the period ending Dec. 31, 1918, to wit:

Be it Resolved, by the Board of Chosen Freeholders of the County of Hudson, that there shall be assessed, raised by taxation and collected for the period ending Dec. 31, 1918, the sum of three million, five hundred and forty-six thousand, four hundred and ninety-three dollars and twenty-two cents (\$3,546,493.22) for the purpose of meeting the appropriations set forth in the following statement of resources and appropriations for the period ending Dec. 31, 1918, to wit:

Exhibit P-2.

RESOURCES.

Surplus revenues appropriated	None
Miscellaneous Revenues	
From interest on bank deposits ..	\$4,000.00
From State for care of insane and County Hospital for board of patients	6,500.00
From State for maintenance of tu- berculosis patients, and from County Hospital for part main- tenance	3,000.00
From surplus revenues of Sheriff ..	2,000.00
From State for part payment of salary of Court Stenographer, and from Probation Officer for fines, etc.	1,500.00
	\$17,000.00
Amount to be raised by taxes ..	\$3,546,493.22

Total budget appropriations .. \$3,563,493.22

BUDGET APPROPRIATIONS.

Schedule "A."

Showing the appropriations, the expenditure of which IS
under the control of the Board of Freeholders:

FIRST: Expenditure for the maintenance of the Court
House and County Jail, to wit:

Court House.

Appropriations	Last
1918	Appropriations

(A). For salaries of employees
at Court House and Power House,
\$8,000. (B). For insurance pre-
miums, telephone and water, \$3,000.
(C) For household, cleansing and
towel supplies, \$1,500. (D). For re-
pairs, equipment and construction,
\$3,500. (E). For power house sup-
plies and repairs, including coal,
oil, waste, repairs to machinery and
hauling ashes, \$6,000.

County Jail.

(F). For salaries of employes
\$11,000. (G). For feeding and
guarding prisoners, \$2,000. (H). For
water, light, etc., \$200. (I). For
equipment and supplies, \$6,500. (J).
For contingent expenses, not other-
wise provided for, \$1,200; a total
of

\$42,900.00	\$175,500.00
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SECOND: Expenditure for
County and State Hospital for the
insane, to wit:

Exhibit P-2.

(A). For salaries and wages of employees, \$7,500. (B). For groceries and provisions, including meats, flour, butter, milk, eggs and all other foodstuffs, \$20,000. (C). For dry-goods, clothing, drugs, household supplies and similar commodities, \$12,000. (D). For water, ice, light, power, insurance and telephone charges, \$2,000. (E). For repairs, equipment and construction, \$17,000. (F). For board of patients at N. J. State Hospitals at Morris Plains and Trenton, \$6,000. (G). For contingent expenses not otherwise provided for, \$1,500; a total of .. 66,000.00 205,000.00

THIRD: Expenditure for the Alms House and the Hospital for the Indigent Poor, to wit:

(A). For salaries and wages of employees, \$5,000. (B). For groceries and provisions, including meats, flour, butter, milk, eggs and all other foodstuffs, \$35,000. (C). For dry goods, clothing, drugs, household supplies and similar commodities, \$12,000. (D). For water, ice, light, power, insurance and telephone charges, \$3,000. (E). For repairs, equipment and construction, \$5,000. (F). For contingent expenses not otherwise provided for, \$1,800, a total of \$1,800.00 145,000.00

FOURTH: Expenditure for the penitentiary, to wit:

(A). For salaries and wages of employees, \$4,000. (B). For groceries and provisions, including meats, flour, butter, milk, eggs, and all other foodstuffs, \$15,000. (C). For dry goods and clothing, drugs, household supplies, and similar commodities, \$4,000. (D). For water, ice, light, power, insurance and telephone charges, \$4,000. (E). For repairs, equipment and construction, \$2,200. (F). For contingent expenses, not otherwise provided for, \$800; a total of 30,000.00 87,300.00

FIFTH: Expenditure for the maintenance of the Small Pox Hospital, to wit:

(A). For salaries and wages of employees, \$250. (B). For supplies and equipment, \$100; a total of .. 350.00 3,547.50

SIXTH: Expenditure for the

Exhibit P-2.

Store Room, at the County Farm, to wit;

(A). For salaries of County Overseer and employees, \$575; a total of

575.00 8,000.00

SEVENTH: Expenditure for the County Stables, at the County Farm, to wit:

(A). For salaries of employees, \$1,000. (B). For feed horses \$600. (C). For purchases of new horses, harness, wagons, other vehicles, supplies, repairs and equipment, \$5,200; a total of

6,800.00 11,600.00

10

EIGHTH: For the compensation of the County Supervisor, Director and members of the Board

2,250.00 27,000.00

NINTH: For the salaries of the officers and employees of the Board, including the offices of the Board, the County Supervisor, the County Collector, the County Physician and the salary of the County Map Clerk, for telephone, light and power charges, \$500. (C). For a total of

8,100.00 67,900.00 21

TENTH: Expenditure for printing, advertising and stationery, required for the use of the Board and the several departments

8,000.00 10,000.00

ELEVENTH: Expenditure for incidental expenses of a miscellaneous character, not otherwise provided for

15,600.00 10,000.0

TWELFTH: Expenditure for the maintenance of and repairs to bridges south of Newark Avenue, Jersey City

2,000.00 5,000.00

THIRTEENTH: Expenditure for the repairs to and maintenance of bridges north of and including Newark avenue, Jersey City, to wit:

30

(A). For salaries and wages of employees, \$2,000. (B). coal and bridge supplies, \$1,000. (D). For repairs, equipment and construction, \$100. (E). For contingent charges, not otherwise provided for, \$300; a total of

3,900.00 30,000.

FOURTEENTH: Expenditure for repairs to and maintenance of the bridges across the Passaic River (known as West Hudson Bridges) maintained jointly by Hudson and Essex Counties, to wit:

40

Exhibit P-2.

	(A). For salaries and wages of employees, \$1,800. (B). For telephone, light and power charges, \$200. (C). For coal and other bridge supplies, \$175. (D). For repairs, equipment and construction, \$8,500. (E) For contingent expenses not otherwise provided for, \$250; a total of	10,925.00	29,000.00
10	FIFTEENTH: Expenditure for the maintenance of and repairs to public highways (other than New Public Road or Boulevard) to wit: (A). For salaries and wages of employees, \$10,000. (B). For repairs to roads and trucking hire, \$2,000. (C). For road supplies, \$2,500. (D). For contingent expenses, not otherwise provided for, \$250; a total of	14,750.00	65,900.00
	SIXTEENTH: For the electric lighting of public highways (other than New Public Road)	1,000.00	12,000.00
20	SEVENTEENTH: For the payment of the salaries of the County Superintendent of Public Works and the mechanics not attached to any institution, including the bookbinders at the Court House	6,500.00	75,000.00
	EIGHTEENTH: Expenditure for the Essex-Hudson Lincoln Highway and bridges (maintained by Essex and Hudson Counties) Essex being charged with five-eighths and Hudson with three-eighths of all expenses; the share of Hudson being subdivided as follows, to wit: (A). For the salaries and wages of employees, \$1,800. (B). For coal and bridges supplies, \$1,200. (C). For telephone, light and power charges, \$700. (D). For repairs, equipment and trucking, \$300. (E). For contingent expenses, not otherwise provided for, \$100; a total of	4,100.00	27,800.00
30	NINETEENTH: For the maintenance of the County Engineering Department, to wit: (A). For salaries and wages of employees, \$2,600. (B). For Engineer's supplies and equipment, \$1,000. (C). For contingent expenses not otherwise provided for, \$200; a total of	3,800.00	22,415.00
40	TWENTIETH: For the maintenance of the Department of Weights and Measures, to wit:		

Exhibit P-2.

(A) For the salaries of employes \$260. (B). For wagon hire and transportation \$100; a total of ...

360.00 3,625.00

TWENTY-FIRST: For the salary of Supt. of Veterans' Burials \$25. (B). For the decoration of soldiers' graves \$1,500. (C). For the annual care of graves \$475. (D). For Veteran's markers, recutting, cleaning, delivery erecting, etc., \$200. (E). For the burial of deceased veterans, \$250. (F). For contingent expenses, not otherwise provided for \$200; a total of

2,530.00 9,800.00

10

TWENTY-SECOND: For the necessary supply of coal for the county institutions at the County Farm

30,000.00 42,000.00

TWENTY-THIRD: For the expenses of the insurance appraisal of county property

3,000.00

\$325,360.00 \$1,073,387.50

SCHEDULE "B."

20

Showing the appropriations, the expenditure of which is NOT controlled by the Board of Freeholders, but which it is obliged to make appropriations, for the use of outlying boards, commissions, and departments, upon their requests.

TWENTY-FOURTH: For the expenses of the Board of Managers of the Hudson County Tuberculosis Hospital and Sanatorium, for the maintenance of these institutions and the Tuberculosis Clinics, including the salaries and all employees

58,000.00 166,000.00 3

TWENTY-FIFTH: For the expenditure of the courts of the county including payment of all necessary salaries

100,000.00 291,000.00

TWENTY-SIXTH: For the use of the State Board of Childrens Guardians, to be expended for the board, clothing, etc., of dependent children, a charge upon the County of Hudson.

50,000.00 88,000.00

TWENTY-SEVENTH: For the payment of the fee of Coroners and Morgue Keepers of the County

500.00 6,000.00

TWENTY-EIGHTH: Expenditure for the County Board of

Exhibit P-2.

	Health and Vital Statistics, including salaries of employes and members thereof	1,800.00	18,150.00
	TWENTY-NINTH: For the expenses of the County Board of Taxation, including salaries of employes	2,500.00	15,400.00
	THIRTIETH: For the maintenance of the Hospital for Contagious Diseases, including salaries of the employes thereof	500.00	6,000.00
10	THIRTY-FIRST: For the use of the Boulevard Commission, including salaries of members and employes	31,000.00	177,000.00
	THIRTY-SECOND: For the support and maintenance of epileptic and feeble-minded children	2,000.00	10,000.00
	THIRTY-THIRD: For the maintenance of county parks,	15,000.00	137,500.00
	THIRTY-FOURTH: For the expenses of the Mosquito Extermination Commission of the County of Hudson	2,500.00	33,000.00
20	THIRTY-FIFTH: For the payment of widows' pensions	5,000.00	55,000.00
	THIRTY-SIXTH: For the expenses of the Bacteriological Laboratory of the County, including salaries of the employes thereof	500.00	6,000.00
	Making a total for Schedule "B" of	\$269,000.00	\$1,232,050.00

SCHEDULE "C."

	Showing the appropriations for the payment of bonded debt, interest and Sinking Fund Charges:	
30	THIRTY-SEVENTH: For the payment of the bonded debt falling due	996,184.58 220,241.80
	THIRTY-EIGHTH: For the payment of interest on county bonds	19,031.35 526,999.68
	THIRTY-NINTH: For the payment of deficiency of interest on county bonds	5,000.00
	FORTIETH: For the payment of overdraft in Alms House, 1906 account	28,244.81
	FORTY-FIRST: For the payment of Sinking Fund requirements	970,672.58 289,056.81
40	FORTY-SECOND: Special appropriation for the purchase of site and part of cost of New Hospital for the Insane	600,000.00

Exhibit P-2.

FORTY-THIRD: Special appropriation for payment of part of the cost of the improvement of the Newark Turnpike

350,000.00

Making a total for Schedule "C" of

\$2,969,133.22 \$1,241,898.29

An aggregate of all appropriations of

\$3,563,493.22 \$3,547,335.79

and be it further

RESOLVED, That the further sum of Two thousand dollars (\$2,000), be and the same is hereby appropriated to meet the estimated deficiency in the receipts necessary to meet the expenses to December 31, 1918, of the Second Judicial District Court of Hudson County; said total is for the sole use of said Second Judicial District Court and the County Board of Taxation will assess and apportion the share of each of the several municipalities in the said Second Judicial District, against said municipalities, according to law.

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By order of resolution of the Board of Chosen Freeholders, adopted at the meeting held July 11, 1918.

WALTER O'MARA,

Clerk.

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31

New Jersey Court of Errors and Appeals.

SAMUEL W. GARRISON, et al., <i>Prosecutors-Respondents,</i> <i>vs.</i> THE MAYOR AND ALDERMEN OF JERSEY CITY, et al., <i>Respondents-Appellants.</i>	10
On Appeal from Supreme Court.	

MEMORANDUM FOR APPELLANTS. 20

Facts.

This appeal is from a judgment entered in the Supreme Court setting aside, in part, an assessment for taxes levied upon property of Prosecutors known as 91 Kensington Avenue, Jersey City. The judgment (Case, p. 196) orders that the assessment in question be vacated in the following particulars:

1. So far as the assessment includes a rate of taxation for local purposes of Jersey City in excess of one-twelfth of the annual rate for such purposes for the fiscal year beginning December 1st, 1917, and ending November 30th, 1918, the same should be set aside. 30

2. The appropriations of said City for general purposes are adjudged to be confined to obligations of said City extra to ordinary running expenses, including interest falling due on 40

bonds or other indebtedness during the month of December, 1918, principal of obligations maturing within said month and any provision for Sinking Fund which would have been required to be made during said month under the law in force January 1st, 1918; and so far as said tax assessment against Prosecutors' property for so-called "General Purposes" exceeds the pro rata part of the total of the above sum, the same is set aside.

10 3. So far as said assessment includes a rate of taxation for County purposes in excess of one-twelfth of the annual rate of the tax assessment for such purposes against the Prosecutors' property for the fiscal year commencing December 1st, 1917, and ending November 30th, 1918, said assessment is set aside.

20 4. So far as Prosecutors' share of the tax for general purposes of the County of Hudson exceeds their pro rata of the amount, in addition to ordinary running expenses required by said County, including interest falling due on bonds or other indebtedness during the month of December, 1918, principal of obligations maturing within said month and any provision for Sinking Fund which would have been required to be made during said month under the law in force January 1st, 1918, said assessment is set aside. The appropriations for Insane Asylum, 30 repairs to Newark Turnpike, expenditures of County Departments, deficiencies and the like, are adjudged not to fall within the term "General Purposes" as intended by Chapter 238, P. L. 1918.

5. Said assessment is further set aside as to Prosecutors' pro rata of any other appropriations within the City or County upon which said assessment is based which do not fall within the classification of "Local Purposes," "County Pur- 40

poses" as equivalent to ordinary running expenses, or "General Purposes" as herein defined; except with respect to the appropriations for local school purposes, State School taxes and State Road Tax; in respect to which and except as above set aside, the said assessment is affirmed.

The assessment in question was so made and levied as a result, in part, of action taken by the governing bodies of Jersey City and of the County of Hudson, as will be hereinafter described, adopting budgets, and, in part, as a result of action of the County Board of Taxation in making certain mandatory additions to the City and County appropriations as fixed by their budgets.

The fiscal year of Jersey City and of the County of Hudson, prior to the passage of Chapter 238, P. L. 1918, began on December 1st of the calender year and ended on November 30th of the succeeding calendar year. The tentative budget of Jersey City (Exhibit D-1, see Case, p. 210) was adopted August 6th, 1918. The County budget (Exhibit D-2, see Case, p. 218) was adopted July 25th, 1918. The resolution of the County Tax Board striking the tax rate was passed October 11th, 1918 (see Case, p. 92, l. 28).

The writ in this case was applied for on November 2nd, 1918, and tested on November 4th. It directs the certification of the assessment of taxes upon Prosecutors' property resulting from the adoption of the budgets and the action of the County Board of Taxation in question.

The proceedings of the two municipalities—City and County—and of the County Tax Board were based upon certain statutes which regulate and provide the machinery for the drawing of budgets, striking of tax rates, imposition or levy of the tax assessment and its collection. By virtue of the County Tax Board Act, P. L. 1906, Chapter 120, p. 215, sec. 6.

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"The governing body of every taxing district is required, on or before the third Tuesday in August in each year, to certify to the Board of Taxation of the respective counties a copy of the annual tax ordinance or resolution or other evidence showing the amount to be raised by taxation for the purposes of the taxing district."

Under Section 7 the Board of Freeholders is required to transmit through the County Collector a similar statement on or before the second Tuesday in August. Under Section 4 the assessors in each taxing district are required to attend at the office of the County Board on the first Tuesday in August with their tax duplicates. The County Board is required then to revise the various assessments and to cause the assessors to enter in appropriate columns the net value assessed to each person, the rate per dollar of which shall be such as will be sufficient to produce the sum required; and, by Section 8, to complete its work on or before October first.

Before striking the rate of tax the County Board is required, under certain other statutes, to add to the amounts appropriated by the budgets certain items as follows: State School Tax as certified to it by the State Comptroller (see School Law, P. L. 1903, sec. 177) and State Road Tax (see Road Tax Act, P. L. 1917, p. 41, as amended P. L. 1918, p. 507). To the municipal appropriations the County Board is also required to add the municipality's share of the cost of the County Government (County Tax Board Act, P. L. 1906, sec. 7, p. 215).

The assessment levied as the result of the foregoing proceedings becomes a lien on December 20th following the striking of the rate and the levying of the tax under the General Tax Act of 1903 (see P. L. 1903, Chap. 208, sec. 49).

When the municipality, following the legislative mandates hereinbefore referred to, came to draw its budget in July, 1918, for adoption in August of that year, it found that by force of the provisions of Chapter 238, P. L. 1918, its fiscal year had been changed so as to make it commence on January 1st, and that authority had been granted, as will be argued hereafter, to appropriate for the interim period. Accordingly, a budget was drawn, adopted and certified to the County Tax Board. The total appropriations as made by the tentative budget were \$1,955,995.79 and divided approximately as follows: 10

For general running expenses of the city	449,000.00
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For debt service, including Sinking Fund provisions, interest on bonds, redemption of serial bonds, redemption of term bonds falling due, redemption of temporary loan bonds past due	1,441,602.63	20
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Tax abatement, deficit in revenue	65,000.00
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To the appropriations as scheduled in the tentative budget, when finally adopted was added an appropriation for local school	1,331,390.34
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See *Tax Ordinance*, Case pp. 4-5.

The County following the same practice adopted a budget which totaled \$3,563,493.22, which amount, less surplus revenues of \$17,000., was to be raised by taxation and might be classified, generally, as follows: 30

Schedule A. For salaries, wages, materials, supplies, maintenance of bridges, roads, etc.	\$325,360.00
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Schedule B. Mandatory appropriations not controlled by Free-	40
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holders, for various County institutions	269,000.00
Schedule C. Bonded debt, interest and Sinking Fund charges	2,969,133.22

The amount of the share of the cost of the County Government which Jersey City had to bear was fixed by the County Tax Board at \$1,731,604.32.

- 20 The County Tax Board also added to the City appropriations \$848,546.39 for State School Tax under the State School Act referred to, and \$358,315.13 for State Road Tax under the State Road Act.

Argument.

POINT I.

- 20 **Court below erred in adjudicating that the tax rate for local purposes for the interim period should not exceed one-twelfth of the annual rate for such purposes for the preceding fiscal year.**

Chapter 238, P. L. 1918, provides as follows:

- 30 "Section 4. In the budget and tax levy next following the passage and approval of this act, any municipality or county whose fiscal year * * * is altered * * * is authorized to make appropriations for local purposes * * * in the case of municipalities and for county purposes in the case of counties for the period between the close of the current fiscal year * * * and the thirty-first day of December following, and a further appropriation for general purposes in such amount as the governing body of such municipality or county may determine and to raise by taxation such moneys as, with the revenues derived or to be derived from all other sources, will meet
- 40 such appropriations; provided, that the

amount to be raised by taxation for local purposes * * * in the case of municipalities and for county purposes in case of counties shall not be such as to cause the rate in the tax levy for such local or county purposes to exceed the rate for like purposes in the next preceding tax levy."

It is frankly conceded that the rate for local purposes in Jersey City exceeds one-twelfth of the rate for like purposes in the next preceding tax levy. It is earnestly contended, however, that the proviso of the statute in question is not susceptible of the construction put upon it by the Court below. 10

There is no ambiguity in the words employed by the legislature to express its intention and it is insisted that the language chosen by the legislature for that purpose can have but one meaning, viz.: that the rate for local purposes for the interim period shall not exceed the rate for local purposes *and the whole rate* for local purposes in the next preceding tax levy. As has been frequently said by our Courts: 20

"The intention of the Legislature is to be collected from the words they employ. Where there is no ambiguity in the words there is no room for construction. To determine that a case is within the intention of a statute, its language must authorize us to say so." *State v. Woodruff*, 68 N. J. L., 93; citing Chief Justice Marshall in *United States v. Wiltberger*, 5 Wheat., 76. 30

This Court, in *Rudderow, Collector, v. The State, West Jersey Ferry Co., Pros.*, 31 N. J. L., p. 515, said:

"No principle is better settled or more important to be faithfully adhered to by courts called upon to enforce written statutes, than that in the absence of ambiguity in the language used, no exposition shall be 40

made which is in opposition to the express words; or as the maxim is sometimes expressed, it is not allowed to interpret what has no need of interpretation."

And this Court approves the language of Judge Washington in the case of *United States v. Fisher*, 2 Cranch., 399:

10 "Where a law is plain and unambiguous, whether it be express in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."

See also *Lanning v. Board of Excise Commissioners*, 76 N. J. L., 130.

20 If it were the legislative intention to limit the rate resulting from the interim appropriations to a pro rata or part of the tax rate in the next preceding levy, such intention could and undoubtedly would have been unequivocally expressed.

Resting its conclusion that the act in question was ambiguous and that there was room for construction upon the ground that the effect of the literal meaning of the words employed would result in absurdity, the Court below said this:

30 "On this subject it seems plain to us that the intent of the legislature in providing the change of the fiscal year and for the interim was to enable the cities and counties to raise what was needed for ordinary current expenses during the interim, and decidedly not to put into their hands a weapon of oppression to the taxpayers. In making this provision it was considered that the criterion of what was needed for local or county purposes in an interim was a proportionate part of what was needed for the preceding fiscal year for similar purposes. To say that it was intended that the city or county could
40 spend in an interim, whether larger or shorter, whether one month as in Jersey City or

eight as in Hoboken or eleven as in Newark, as much as was spent in the preceding fiscal year, savors to us of absurdity * * *. On the contrary the 'rate' for December, 1918, is not to exceed the 'rate' attributable to December, 1917, i. e., an ordinary month's local expenditure."

A few minutes' consideration of the theory of taxation, the power of the legislature to impose taxes and of the situation that existed both before the passage of the act in question and as a result of its passage, we think will demonstrate that the Court below erred in concluding that to give effect to the literal meaning of the words would result in absurd consequences. 10

In the first place, the Court below disregards the natural limitations upon the use of the power of taxation. The theory of all taxation is that taxes are imposed as a compensation for something received by the taxpayer. 20

Dalrymple v. Milwaukee, 53 Wis., 178.

Taxation is based upon some idea of compensation, benefit or advantage, direct or indirect, to the person taxed.

Williams v. Detroit, 2 Mich., 560.

The justification of the demand is found in the reciprocal duties of protection and support between the State and those who are subject to its authority and exclusive sovereignty and jurisdiction of the State over all persons and property within its limits for governmental purposes. 30

McKeen v. Northampton Co., 49 Pa. State, 519.

The person upon whom the demand is made or whose property is taken owes to the State a duty to do what shall be his just proportion for 40

the support of government and the State is supposed to make adequate and full compensation in the protection which it gives to his life, liberty and property and in the increase to the value of his possessions by the use to which the money contributed is applied.

Dalrymple v. Milwaukee, ante;
People v. Brooklyn, 4 N. Y., 419;
 In *re Tuthill*, 163 N. Y., 133;
Huston v. Tribbetts, 171 Ill., 547.

The seeming injustice of a levy actually authorized by law cannot defeat it, provided it is made under such general rules as the wisdom of the legislature has determined are needful and also for the general good.

Amesbury Co. v. Weed, 17 Mass., 52.

The Court below seemed to be under the impression that a rate for one month for local purposes, limited only by the rate for the full twelve months preceding, would operate *oppressively* upon the taxpayers. No tax which is legal can be said to be oppressive. True, it might be burdensome or work a hardship, but so long as sanctioned by law a tax cannot be legally oppressive. Indeed, it has been aptly stated "the power of taxation in its very nature acknowledges no limits and may be carried even to the extent of exhaustion and destruction, thus becoming in its exercise a power to destroy."

McCulloch v. Maryland, 4 Wheat., 316.

If the power be threatened with abuse, security must be found in the responsibility of the legislature that imposes the tax to the constituency which must pay it. The judiciary can afford no redress against "oppressive" taxation so long as the legislature in imposing it shall keep within the limitation of legislative authority and violate

no express provision of the Constitution. The necessity for imposing it addresses itself to the legislative discretion, and it is or may be an urgent necessity which will admit of no property or other conflicting right in the citizen while it remains unsatisfied. *Veazie Bank v. Fenno*, 8 Wall 533.

The natural limitation upon the exercise of the power of taxation constitutes in itself a safeguard to the taxpayer. Taxes are imposed for the purpose of raising moneys to defray the expense of various municipal operations and activities. The result of the municipal operations thus finance is to benefit the taxpayer. Moneys raised by taxation cannot be spent for any other purpose. They cannot be appropriated to the private purse of the officeholder, but must be returned to the taxpayer in the form of protection to his life, his liberty and his property, or by way of enhancement of his possessions. Legislative or statutory recognition of the principle that taxes must be and are imposed for the benefit of the taxpayer is found in Chapter 192, P. L. 1917, as amended by Chapter 242, P. L. 1918. Section 6 provides that the budget shall consist of, among other things, surplus revenue which, by Section 7, is required to include the unexpended balances of the budget appropriations of the previous year in excess of obligations incurred therefor and purposes unfulfilled thereunder which are properly chargeable thereto.

Should the municipality, either as a result of design or inadvertence, transgress the natural limitations of the power of taxation and raise more moneys than are needed in a given period, the taxpayer benefits thereby because automatically, under the provision just cited, the surplus goes to the credit of the succeeding tax levy.

As a result of the passage of Chapter 238, P. L.

1918, the fiscal years of some nine or ten municipalities were changed, among them being Elizabeth, Bayonne, Hoboken, Paterson, Passaic, Trenton, Atlantic City, Jersey City and Essex and Hudson Counties. The fiscal years of those municipalities began at various times—Jersey City and Hudson County, December 1st; Passaic, Paterson, Elizabeth, July 1st; Hoboken, Bayonne, Trenton and Atlantic City, May 1st.

- 10 As a result, therefore, of the passage of the act in question, some of the municipalities had to appropriate for an interim of eight months, some for an interim of six months and some for an interim of one month. To adopt the construction put upon the proviso of the statute in question by the Court below, we are required to assume that the legislature felt itself competent to foresee all of the contingencies that might arise throughout the State as the result of the passage of the act.
- 20

- Isn't it a more reasonable theory to assume that the legislature understood that there would be many and varied conditions prevailing in the various municipalities throughout the State to be affected by the act; that budgets would have to be adopted for different interim periods; and rather than attempt to regulate any inequalities by legislative enactment which might operate harshly with some and liberally with others if a pro rata rate or ratio were adopted, a maximum standard or basis were selected? Especially is this so in view of the natural limitations upon taxation—being limited to raising moneys needed for municipal purposes, and in view of the provision that unexpended balances are required to go to the credit of the succeeding appropriation.
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- Jersey City, which appropriated for local purposes for one month, had to include a large appropriation for snow removal which is fixed
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largely as the result of guess work. Hoboken, which adopted an eight-months budget for local purposes, is required to meet this extraordinary expense for only one-eighth of the period for which it appropriated. Is it conceivable that it was the legislative intent that Jersey City should be limited to a rate exactly one-twelfth of the rate of the preceding year, handicapped as it might be by being called on to meet extraordinary appropriations in the one month, whereas Hoboken, would have the benefit of the summer months to average up its rate? 10

Additional light is thrown upon the intention of the legislature when it is considered that practically all of the materials which municipalities use have advanced in price within the past two years anywhere from twenty-five to one hundred per cent. That advance was well on its way when the act in question was passed. The result of adopting the Court's construction would be to assume that the legislature intended to hamper and restrict municipal activities during the period for which the short term budget was to be adopted. 20

Further light is thrown upon the legislative intent by the number and character of enactments passed during the session of 1918 affecting first class counties and other municipalities in general. To begin with, as a result of the Local Option Acts, Chapters 2 and 3, machinery was provided whereby the voters of any municipality might determine whether or not intoxicating liquors should be sold within the confines of the municipality. It must have been within the cognizance of the legislature that as a result of the privilege given to the voters to determine whether or not liquor should be sold, the revenues of the various municipalities of the State were subject to reduction by reason of the cutting off of the liquor business. 30 40

Statutes to the number of approximately twenty were passed amplifying the powers and duties of municipalities in this State, and subjecting them to increased expense.

FOR ILLUSTRATION:

Chapter 159, P. L. 1918—Appropriation of Twenty Thousand Dollars, Home Defense;

Chapter 74, P. L. 1918—Unlimited appropriation for agricultural extension work;

Chapter 268, P. L. 1918—Annual audit required, publication of audit;

Chapter 155, P. L. 1918—Unlimited power to appropriate for dental clinics;

Chapter 131, P. L. 1918—Advance payment on contracts authorized;

Chapter 126, P. L. 1918—Unlimited appropriation for library;

Chapter 56, P. L. 1918—Bonds authorized for sewer system, appropriations for interest or principal on bonds;

Chapter 53, P. L. 1918—Grant of power to purchase and sell foods and fuel for the period of the war;

Chapter 246, P. L. 1918—Police chaplains authorized.

By force of the County Home Rule Act—Chapter 185, P. L. 1918, being a complete revision of all law on the subject of county government, the powers and duties of the Board of Freeholders of first class counties are amplified and extended considerably.

Can it be believed that the legislature, which cast upon the municipalities and counties of this State increased burdens or vested them with additional powers, the exercise of which called for increased expenses, intended by other legislation to limit and restrict some of the municipalities (those whose fiscal years were changed) so

as to prevent them from discharging the burdens cast upon them or exercising the additional powers conferred? Is it reasonable to suppose the legislature said to the municipalities affected, "You shall have the power to establish dental clinics, to encourage agricultural extension work, to assist Home Defense units, etc.," and then, on the other hand, provide that the municipality could not raise the money for those additional duties by saying that its rate for the interim period could not exceed the pro rata part of the rate in the preceding tax levy? We think not. 10

To summarize what has been said on this subject, we respectfully insist that the Court below erred in finding that there was room for construction or interpretation of the act in question, and in finding that the rate for local purposes under the interim budget should not exceed a pro rata of the rate of the preceding tax levy. 20

POINT II.

The Court below erred in limiting appropriations for general purposes.

The judgment of the Court below is this:

"The appropriations of said city for general purposes are adjudged to be confined to obligations of said city extra to ordinary running expenses, including interest falling due on bonds or other indebtedness during the month of December, 1918, principal of obligations maturing within said month, and any provision for sinking fund which would have been required to be ~~made~~ within said month under the law in force January 1st, 1918. So far as said tax assessment against the property of the prosecutor for so-called general purposes of said city exceeds the pro rata part of the total of the above sum, the same is set aside." 30

The pertinent portion of the act in question is: 40

"In the budget and tax levy * * * any municipality or county whose fiscal year * * * is altered * * * is authorized to make appropriations for local purposes * * * and for county purposes * * * and a further appropriation for general purposes *in such amount as the governing body of such municipality or county may determine*, and to raise by taxation such moneys as, with the revenues derived or to be derived from all other sources, will meet such appropriation."

10 It will be observed that the grant of power to appropriate for general purposes is without limitation or restriction, and that the limitation of the proviso applies only to the appropriation for local purposes. In fact, the Court below, in its opinion, holds that precise thing. It says:

"This (the intention of the legislature) is emphasized by the discretion given to raise money for general purposes *which is not limited*."

20 Yet, in formulating its judgment, the Court below did limit the appropriation for general purposes as defined by it and expressly stated what character of general appropriations might be made. Excluded from its classification of such appropriations are temporary loan bonds of Jersey City, which by the ordinance authorizing their issue, are required to be paid out of the next tax levy made after their issuance. Like-
 30 wise eliminated from this class are temporary loan bonds issued in past years and for which no provision has heretofore been made, and which now are, in effect, demand obligations and constitute floating indebtedness. If demand be made for their payment, the city, under the ruling of the Court below, has no means of raising the money to pay them. Under Floating Indebtedness Act, 1918, no such bonds can be refunded after
 40 August 1st, 1918, but must be paid off. Likewise,

the Court below deprived the municipal authorities of any discretion with respect to calling in obligations now outstanding.

The modern method of financing permanent improvements, such as new schools, hospitals, fire houses, etc., is to issue a temporary improvement bond or note as the money is needed, contingent upon the progress of the work. The bonds are payable upon a fixed day or sooner, if called by the city. When the work is about finished, an issue of bonds for the whole cost of the work is authorized, and the proceeds used to retire the temporary bonds or notes previously issued. In that way, large sums of money by way of interest are saved, because the city does not pay interest upon the total issue and allow the money to lie idle, pending the completion of the work. The Court below has held that the City has no power to retire any of the improvement bonds during the interim period, because the language of the judgment is:

“Principal of obligations *maturing* within said month may be retired.”

Its obligations do not mature and hence the city cannot appropriate for them and call them in. Without intending to be impertinent, we desire to say that upon the settlement of the rule for judgment, the attention of the Court was called to the language of its opinion that the discretion to raise money for general purposes was not limited, but our efforts were of no avail.

We think it quite clear that regardless of what may be said was the intent of the legislature to limit appropriations for local purposes, it was indubitably its intention to grant full discretion to the municipality in appropriating for sinking funds, retirement of bonds, etc. If the legislature, when it said, “A further appro-

priation for general purposes in such amount as the governing body may determine" did not mean that, we must confess we do not know what it did mean.

POINT III.

10 **The Court below erred in holding that the rate for county purposes should not exceed one-twelfth of the preceding tax rate, and likewise erred in limiting appropriations for general purposes of the county.**

What has been said under Points 1 and 2 with respect to the city appropriations applies with equal force to the appropriations made by the County of Hudson.

POINT IV.

20 **Inclusion of alleged illegal items in the County and City budgets.**

30 Much was said on the argument in the Court below with respect to certain alleged illegal items in the county budget and in the city budget, and the point may be urged here. In the case of the county we understand the alleged illegal items consist of an appropriation of \$600,000, special appropriation for the purchase of a site and part of the cost of a new hospital for the insane, and \$350,000, special appropriation for payment of part of the cost of improvement of the Newark Turnpike (State of Case pp. 224-225) and in the case of the city, the following items:

40 Twenty thousand dollars—advertising;
 Six hundred and seventy-four thousand dollars—temporary loan bonds;
 Two hundred and forty thousand dollars—sinking fund;

Thirty-five thousand dollars—tax appraisals;
One hundred and forty thousand dollars—general bonds;

One hundred and fifty-five thousand dollars—temporary bonds.

The criticism made by the respondents of the insane asylum and Newark Turnpike appropriations in the county budget and the advertising and tax appraisals in the city budget was based upon the ground that the statute authorized, if anything, an appropriation only for moneys to be expended during the month of December. 10

So far as the advertising and tax appraisal appropriations are concerned, there is no proof in the record to show that the city did not intend to spend those moneys during the month of December, and we take it the burden is upon the respondents to prove that. By "advertising" is not meant the mere formal advertisement of ordinances and notices respecting the transaction of routine business. It is an appropriation specifically authorized by statute, designed to exploit the city's natural advantages along the lines of commercial development, such as waterway and railroad facilities, sites for manufacturing, etc. As Commissioner Gannon said, "To carry on a proper advertising campaign on those subjects, Twenty thousand dollars would hardly be enough." 20

Concerning the appropriation for the revaluation of second-class railroad property, \$35,000, we have this to say: Second-class railroad property in Jersey City forms a large part of the ratables and its value is upwards of Fifty-nine million dollars. We can well imagine the city might, during December, make a contract with an engineering firm for an exhaustive and comprehensive investigation of second-class railroad property in the course of which \$35,000 could 30 40

be properly spent. In fact, such survey and valuation is now under way.

Assuming that the city and county have the power to appropriate for local purposes unlimited as to the rate, then we submit no one would have the right to assume that the governing bodies do not intend to spend the money. If the making of the appropriation is discretionary, and there is no proof of abuse or of fraud, then we take it that the Court is bound by the action of the governing body.

Mr. Cooley, in his work on taxation, has this to say:

"In all legal proceedings, after proper evidence is given of municipal action, it is always to be assumed that the municipality, whether represented by its people or by its official board, has acted wisely and well upon all matters of policy and of discretion which have been submitted to it, and that the conclusion was warranted by the facts and circumstances which were the basis of its action. The courts have no power to review their action, so long as they are found to have kept within the limits of their authority. The legislature, which gives and recalls at pleasure the power to tax, may do so, but not the courts.

"A learned and able court has spoken very clearly and pointedly concerning the absence of power in the judicial tribunals to entertain appeals from the municipal bodies in the exercise of their discretionary power to tax. The case was one in which the attempt was made to enjoin school directors from the levy of a tax regularly voted. 'No such appeals lies, for none is given by law. Most of our tax laws entitle the citizen to a hearing before he is obliged to pay; not to a judicial hearing, indeed, but to an appeal to some special tribunals, generally the county commissioners; but the school law gives no such appeal. This is the reason why the ear of the courts should be open to

well founded complaints on the part of the citizen; but where he has no irregularity, no neglect of duty, no excess of authority to complain of, nothing, indeed, but an indiscreet use of clearly granted discretion, he will vex the judicial ear in vain, for the judicial arm can redress no such wrong. The power of taxation, altogether legislative, and in no degree judicial, is committed by the legislature, in the matter of schools, to the directors of school districts. If the directors refuse to perform their duties, the court can compel them. If they transcend their powers, the court can restrain them. If they misjudge their power, the court can correct them. But if they exercise their unquestionable powers unwisely, there is no judicial remedy.' This is a clear and strong statement of a wise and salutary general principal." Cooley on taxation page 582.

State Board of Assessors v. Central Railroad Co., 48 N. J. L., 146; from the opinion of the Chancellor at page 282:

"The power of taxation is in the legislative branch of the government alone. It is unbounded except as it may be limited by constitutional restraint."

From the opinion of Judge Dixon, at page 308:

"It is laid down that the power of taxation belongs to the legislature and its agents exclusively and that the courts in the absence of constitutional restriction have no control over its exercise beyond seeing that the will of the legislature is enforced. By this is meant not that the power of taxation is a limitless power, but only that the legislative authority over the subject, taxation, is absolute * * *. Over the area thus determined the will of the legislature is the supreme law. No doubt impolitic or unjust taxes may be levied, but the only remedy for such imposition is by appeal to the legislature. The courts may decide whether any particular exaction is a tax or not, but if

found to be a tax, such as they whose institutions we inherit recognized as coming within the language of the taxing power, it is the duty of the judiciary to uphold the levy regardless of their own views of its wisdom or equity. The struggle for fairness of taxation must remain in the preliminary arena except as it may be removed to some other sphere by constitutional provision."

The same answer can be made for the insane
 10 asylum with this further suggestion. It might very well be that the Freeholders, during the month of December, purchase might have planned to or condemn a site and award contracts for the erection of an insane asylum. There is no proof that they did not intend to do so, and mala fides is never presumed against a public official.

Runge v. West Hoboken, 88 N. J. L., 301.

20 They have not done so, although a site is in view, because of the confusion and doubt resulting from this case.

Had they determined to condemn a site the moneys would have to be on hand.

Wendel v. Hoboken, 76 N. J. L., 499.

It has frequently been held in this state that in order to comply with the "Crimes Act," moneys
 30 contracted to be spent must be on hand at the time of the making of the contract; *Hurley v. Trenton*, 67 N. J. L. 350; *Niles v. Board of Education*, 70 N. J. L. 1; *Bew v. Ventnor City*, 81 N. J. L. 207.

If the Freeholders had determined to erect a new hospital for the insane, to purchase the site and award the contracts during December, it was their undoubted right, it seems to us, to include an appropriation for that purpose in the
 40 budget in question. So far as the Turnpike is

concerned, the same reasoning applies to that. There is this difference in the two matters: the Turnpike road is now and has been for some months in course of construction.

Express statutory authority exists for the freeholders to raise moneys for improvements of the character in question by taxation. (See P. L. 1918, Chapter 185, p. 623, Section 1719.)

Some further explanation should be made perhaps of the reason for the inclusion in the interim budget of the county of the appropriations for hospital for the insane and Newark Turnpike. It is a matter of common knowledge that shortly after the entry of the United States into the world war a Capital Issues Committee was created for the purpose of limiting the issuance of stocks and bonds. \$100,000 was fixed by the Committee as the amount which might be issued without its permission or certificate. Any issue above that sum required the sanction of the Committee. When the Freeholders undertook in the Summer of 1918 the matter of the hospital for the insane and the Newark Turnpike, application was made to the Capital Issues Committee for permission to issue bonds for the two purposes. The certificate of the Committee was refused on the ground that the objects were not related to war necessities and that all the energies of the country should be devoted to winning the war and that neither capital nor labor should be diverted from that purpose. Conceiving that the restrictions of the Capital Issues Committee would remain in force for a considerable period, at least the life of the war, which the Freeholders judged to be about two years longer, it was concluded to raise the moneys by making direct appropriation for the same. As a matter of fact the contract for the reconstruction of the Newark Turnpike had already been awarded.

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It was absolutely necessary before the work began to provide for the moneys.

Explanation is also perhaps required of the items comprising Schedule C. of the county budget, viz.: Bonded Debt, Interest and Sinking Fund Charge. The first item is bonded debt falling due, \$996,184.55. See case, page 224. Of that sum substantially one-half of it represents bonds maturing by their terms in the month of December, 1918; the balance represents obligations past due which the Freeholders elected to call and redeem. The next two items are of slight consequence. The fourth item of \$28,244.81 is likewise an obligation past due which the Freeholders elected to call.

The fifth item of sinking fund requirements, \$970,672.58, is the amount necessary to put the sinking fund on an actuarial amortization basis in accordance with the requirements of the Sinking Fund Act, Chapter 212, P. L. 1917, Chapter 243, P. L. 1918. The sinking fund requirements of the county were below par and this appropriation was made to meet the actual requirements of 1918 and as well to bring the sinking fund up to date.

POINT V.

The Court below erred in holding respondents free from laches.

On this subject, the Court had this to say:

"We find no laches in the case. It was not until October 11th that prosecutor learned of the assessment in question. The County Board had until October 1st to settle the rate. * * * If so, the application made within a month thereafter is not out of time. The city budget was advertised, it is true, in August, but stated that the taxes to be raised were for the fiscal year ending December 31st,

1918—a misstatement, which, whether intentional or not, seems to have deceived many citizens into thinking that the rate of seventeen dollars and thirty cents was for a year and not a month. We think laches is not made out.”

In the first place, the record is bare of any proof that the “misstatement” deceived many citizens into thinking that the rate of \$17.30 was for a year. In the second place, the prosecutor himself was not deceived, at least, he did not testify that he had been. Thirdly, anyone who had seen the notice as published and had taken enough care to read it, would have discovered that it was not for a year, except in certain respects, and that the appropriation for local purposes was for one month. The notice states:

“Notice is hereby given that the Board of Commissioners of Jersey City at a meeting held July 24th, 1918, approved the following budget of municipal appropriations *for the term* ending December 31st, 1918, and has fixed Tuesday, August 6th, 1918, at two o'clock P. M., in the Assembly Chamber, City Hall, Jersey City, New Jersey, as the time and place when and where objections to such budget may be presented according to and as provided by law.”

It is true that the ordinance was entitled, “An Ordinance relating to taxes for the fiscal year ending December 31st, 1918.”

The notice that was given was so given by virtue of Chapter 192, P. L. 1917, Sections 2 and 3, and Chapter 242, P. L. 1918, Section 2 of the original act remaining in force until January 1st, 1919. On July 27th, 1918, and on a later day, the publication was made, hearing fixed for August 6th, and budget adopted on that day. As a part of the notice the budget was published in full; contemporaneously therewith news articles appeared

commenting upon the introduction of the budget, and discussing the various appropriations. Neither prosecutor nor anyone else appeared to object to either the form or contents of the budget, and the governing body of the city was allowed to remain in complete ignorance of any conviction that Mr. Garrison or any other taxpayer had that the budget was illegal, until November 2nd, 1918. The respondent said that the first notice
 10 he had that the budget had been adopted was that given by an advertisement inserted by the County Tax Board in the local newspapers, around October 11th, that the tax rate had been struck. It is a very curious and striking thing that the respondent's interest in the alleged irregularity and illegality of the budget was contemporaneous with the annual political campaign in Jersey City.

20 We submit that in view of the widespread effect of any averse decision, respondents should be held to the utmost vigilance. Not only is Jersey City affected by the pending case, but as well, Hoboken, Paterson, Passaic, Bayonne, Elizabeth, Trenton and Atlantic City, officials from some of which cities appeared and testified that their budgets had been adopted in substantially the same manner and contained provisions of the same general character as the budget of Jersey
 30 City. In addition, if the county budget and the county rate are to be set aside, the tax rate of each municipality in Hudson County will be affected. Thousands of dollars have no doubt been paid to those municipalities and if it is subsequently found that overpayments have been made, they cannot be recovered—having been voluntarily paid. Hoboken, Paterson, Passaic, Bayonne, Elizabeth, Trenton and Atlantic City have been operating under their budgets, some
 40 of them since May 1st of the present year. Hun-

dreds of thousands of dollars of tax anticipation bonds and notes have been issued; contracts for various improvements have been let, to be paid for out of taxes to be collected, and indescribable confusion and chaos in the financial affairs of the municipalities involved will result if the opinion of the Court below is affirmed.

It seems to us that the taxpayer is required, by virtue of the provisions of the acts referred to under this point, to assert his objections before the governing body. The language of the section follows:

“Notice for hearing as herein required shall fix time and place when and where objections thereto may be presented by any taxpayer of said municipality or county, as the case may be.”

It is a remedy which the legislature afforded the taxpayer. In this instance, the respondents have either deliberately or through neglect failed to take advantage of that remedy, and we submit that under the circumstances, they should not now be heard to question what they then had the opportunity to object to.

After the respondents had actual knowledge of the striking of the rate, they waited for almost a month before seeking to review its legality. While in the ordinary case such delay might not amount to laches, yet we earnestly insist that under the circumstances of this case, the respondents should have acted at once. If they had done so, this case could have been decided by the Supreme Court in time for it to have gotten on the regular calendar of the November Term of this Court, and decided by this Court in sufficient time before the tax assessment becomes a lien to permit the municipality to adjust its affairs if the rate is illegal.

For the reasons stated, the judgment of the Court below should be reversed and the assessment brought up for review affirmed.

As to the Cross-Appeal.

Respondents have likewise appealed from the judgment of the Supreme Court and seek to have the whole assessment set aside and vacated, eight specific grounds of appeal being advanced. Those eight may be classified as follows:

1. No budget or assessment could be made at all for any tax becoming due December 20th.

2. Appropriations which are annual in character and are made by force of independent statutory enactment, such as State School Tax, State Road Tax, local school appropriation, Sinking Fund.

3. Redemption of bonds.

POINT I.

Supposed lack of authority.

As has been heretofore stated, the City and County budgets were adopted under the authority of the County Tax Board Act of 1906, Chapter 120, and Chapter 238, P. L. 1918.

Prosecutors contend that no budget can be adopted to become operative until the beginning of a fiscal year of a municipality and that no moneys appropriated by such budget can be expended until after the commencement of the fiscal year. We concede that ordinarily that is so. However, they go one step further and say that by the words "in the budget and tax levy next following the passage and approval of this act" the legislature intended to permit appropriations to be made for the period between the close of the old fiscal year and December 31st only in the

budget to be adopted after January 1st or to become operative after January 1st. We disagree with them in that respect. We contend that the legislative intent was, having in mind, as we have said, the machinery already erected by it for the levying of a tax and for the adopting of budgets, to provide that in the budget and tax levy which would have been adopted if the act in question had not been passed any municipality might make appropriations of the nature and character described in the act. That this is so is borne out by the fact that there is but one tax levy to be made following the passage of Chapter 238, namely, upon October 1st, 1918, under the authority of Section 8, P. L. 1906, Chapter 120, and which levy is made upon valuations as of May 20th 1918. The new tax act of 1918, Chapter 236, has no operation or effect upon taxes to be assessed for the year 1918 or any portion thereof and applies only to taxes to be assessed for the year 1919 and subsequent years. It is provided by Section 801, P. L. 1918, p. 882:

"This act shall take effect on the first day of October, nineteen hundred and eighteen, and its provisions shall extend to proceedings thereunder on and after that date, relating to taxes assessed for the year nineteen hundred and nineteen and subsequent years but not to proceedings relating to taxes assessed in prior years. All acts, general and special, inconsistent with the provisions of this act, are hereby repealed, but this repealer shall not extend to proceedings or remedies relating to taxes assessed for the year nineteen hundred and eighteen, or prior years."

A minute's consideration of the effect of legislation such as the Prosecutors contend for is sufficient in our judgment to demonstrate that it was not the legislative intent to create conditions that would flow from such action.

At the time of the passage of Chapter 238, P. L. 1918, the municipalities heretofore mentioned were operating under fiscal years beginning at various dates other than January 1st. To construe Chapter 238 in harmony with the Prosecutors' contention is to impute to the legislature an intention to tie the hands of such municipalities and prevent them from making appropriations for any purpose until after January 1st, 1919. Hoboken's fiscal year began on the first Monday in May. Is it to be supposed that the legislature intended that for eight months of the calendar year of 1918 the City of Hoboken was to be prevented from making appropriations and raising money to bear its running expenses? Likewise, is it to be supposed that the City of Hoboken was to undertake to secure funds to meet bond issues and interest upon bonds by issuing other bonds, if that could be done, although it is somewhat doubtful? See P. L. 1917, Chapter 240, section 14, paragraph i—the provision being that no bond issued under that act shall be refunded. No floating indebtedness can be refunded after August 1, 1918. See Chapter 244, P. L. 1918. Can we say that the legislative intent was to require such municipality to default upon its obligations?

Another effect of the construction put upon the Fiscal Year Act by the prosecutors is to prevent municipalities from raising and having on hand by December 31st, 1918, moneys necessary to meet the expenses of the local schools for the portion of the fiscal year between July 1st and December 31st, 1918.

As we construe the Budget Act, P. L. 1917, Chapter 192, as amended by P. L. 1918, Chapter 242, the budget for the new fiscal year commencing January 1st, 1919, cannot be adopted until some day after the first of January, 1919. We

think there is no escape from that conclusion. Now, that being so, here is what would happen if the municipalities were prevented from adopting budgets for the period between the close of the old fiscal year and December 31st, 1918:

The school fiscal year commenced on July 1st, 1918. Under section 74 School Act 1903, the Board of Education made up its tentative appropriations on or before May 15th of this year. That was certified to the Board of School Estimate, which, by June 1st, was required to fix and determine the amount to be appropriated and certify the result of its action to the governing body. Appreciating that the money for running the local schools would not, in fact, be raised and collected by the municipality until the taxes were assessed and collected, viz.: December 20th under the General Tax Act, the Legislature granted the Board of Education power to borrow moneys for the purposes of current expenses and repair of school houses during the first six months of the school fiscal year (section 55, School Act 1903). Those notes, when issued are hypothecated with local institutions and are payable by December 31st of the calendar year. Now the municipality, under the prosecutors' contention, is stripped of power to make appropriations and adopt a budget. How then are the notes of the Board of Education, issued during the first six months of the fiscal year—and payable on December 31st, to be met? Where do the moneys come from? The budget for 1919, as has been said, cannot be adopted until after January 1st; in fact, it cannot be introduced until after January 1st, and in order to comply with the formalities laid down by the Budget Act final action cannot be taken upon it until after the expiration of at least two weeks. Assuming then that the municipalities could borrow moneys

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on the 1919 budget in anticipation of taxes, the bonds could not be sold until after due advertisement of at least ten days. Making the best speed possible under the circumstances, the municipality would not have any money in its treasury until some time after February 1st. In the meantime the school notes would have been defaulted upon. Is it possible that the Legislature intended to create that condition?

What has been said with reference to school moneys applies with equal force to term and serial bonds falling due during the period between the close of the old fiscal year and December 31st, 1918, and also applies with like force to the necessity for making a Sinking Fund provision. That phase of question will be discussed at length in another part of this brief.

20 We do not believe that the construction put by the prosecutors upon Chapter 238 is a reasonable one. Further, we do not believe that it is consistent with the carrying on of municipal affairs, and we most respectfully urge that in view of all the circumstances, the legislative intent was to authorize the adopting of a budget and the making of an appropriation for the period between the old fiscal year and December 31st, and that the procedure to be followed was that laid down in the County Tax Board Act of 1906.

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POINT II.

As to annual appropriations for (a) Local Schools (b) Sinking Fund (c) State School and (d) Road Tax.

(a) Local Schools.

In the first place, the exception "other than schools" is made for the purpose of keeping this statute in harmony with the Budget Act, because under the Budget Act, P. L. 1917, Chapter 192, as amended by P. L. 1918, Chapter 242, the appropriation for local schools does not form part of the budget. The budget is prepared and introduced without any provision being made for local school purposes. The appropriation for the local schools forms part of the tax ordinance by which the budget is adopted. 10

The governing body has no volition in the matter. The School Act as heretofore explained lodged the appropriating power in the hands of the Board of School Estimate. The governing body simply raises the amount certified to it by the former Board. 20

(b) Sinking Fund.

Primarily, we insist that Sinking Fund appropriation is for an annual calendar year and bears no relation to moneys raised to be spent during the fiscal year, except as a matter of machinery for its collection the provision is included in the budget. 30

For illustration, the Sinking Fund Act, Chapter 212, P. L. 1917, also Chapter 243, P. L. 1918.

Section 14 of the Sinking Fund Act provides,

"Annual Sinking Fund requirements for the uncanceled bonds of any issue of term bonds issued by any municipality, county or 40

school district of the state shall not be less than an amount which, figured at the time of the issuance of the said bonds, would, if thereafter annually contributed to such fund, with the fund and with the accumulations thereon, and the contributions thereto, computed at the rate of three and one-half per centum per annum, produce at the date of maturity an amount equal to the amount of the bonds, which shall hereafter be known as the 'Amortization basis.'"

10 To put it in a single sentence, therefore, the purpose of a Sinking Fund is to provide a reserve which shall amortize an issue of bonds at its maturity.

It is interesting also in this connection to consider the possible effect of legislation which would prevent the city from making an annual appropriation for Sinking Fund purposes. To illustrate; Jersey City in October, 1911, purchased its water works from the Jersey City
20 Water Supply Company and paid \$7,500,000. The payment was made by means of the sale of bonds. The bonds are for a period of fifty years. The ordinance authorizing the issuance of the bonds provides that "in order to redeem said bonds at maturity a Sinking Fund is hereby established, into which shall be paid *annually* during the term of said bonds the sum of at least one and one-half per centum of the principal of said bonds, which amount shall be paid
30 over *annually* to the Commissioners of the Sinking Fund for investment and the retirement of said bonds." Similar provisions are incorporated in substantially every ordinance forming the foundation for all city bonds that have been sold.

We contend that the bondholder has a contract with the city whereby the municipality bound itself that it would annually—and in each calendar year—set aside the sum named in the bond
40 ordinance as sufficient to amortize the bonds

when they fell due. It is beyond the power of the legislature to abrogate that contract. Certainly this much is true—it was not the legislative intention to prevent the city from keeping faith with the bondholders and it was not its intention to prevent the city from making an annual Sinking Fund provision.

The appropriation for Sinking Fund purposes, therefore, is not for any definite number of months. It has no proper relation to the fiscal year, but must be made during each calendar year. It was asked on the argument by the Court below why the city did not only appropriate one-twelfth of \$240,000 instead of the full amount. The answer is plain enough. Had it done so, the various Sinking Funds at the maturity of the bonds outstanding would be short eleven-twelfths of \$240,000. 10

We therefore respectfully urge that the Sinking Fund provision, in view of the effect of the Sinking Fund Act and of the contract between the city and the bondholder, is an annual appropriation, and must be made in each year, and that the Sinking Fund appropriation in the budget in question is entirely lawful and justified. 20

(c) State School and (d) State Road Tax.

It is unnecessary to repeat what has been said regarding the lack of relationship between an annual appropriation and an appropriation for the fiscal year. The state school and state road tax are annual taxes. The state school tax arises by force of Section 177 of the School Act of 1903, which provides: 30

“* * * In addition to the amount so determined and appropriated, a state School tax shall be annually assessed, levied and collected upon the taxable real and personal 40

property in the state * * *. Said tax shall be such an amount as will make, when added to the amount determined and appropriated as aforesaid, a sum equal to two and three-quarters of a mill on every dollar of valuation."

10 The state road tax was created under the provisions of the Edge State Road Act of 1917, Chapter 16 P. L. 1917, as amended by P. L. 1918, p. 507, the pertinent language being:

"There shall be annually for a period of five years from the date of the passage of this act assessed, levied and collected in each of the municipalities of the counties of this state a tax of one mill on every dollar of the value of all the real and personal property in every such municipality, upon which municipality taxes are or shall be assessed, levied and collected."

20 The machinery provided for the imposition and collection of the two taxes in question is by means of certification to the County Tax Board, and the addition by that Board of the respective amounts to the appropriations as adopted by the municipality in its budget or tax ordinance.

30 It is respectfully insisted that the taxes in question are annual taxes and must be annually and in each and every calendar year assessed, levied and collected for the benefit of the public schools and state roads. They are not contingent upon fiscal year, and have no relation to them. Under the legislative enactments referred to, every citizen in this state must at least once in each calendar year pay his share of the cost of maintaining the public schools and public roads. It is a mere incident in the machinery provided for the collection of the taxes that they form part of the local tax and are assessed as a part of that tax.

40 While it is not controlling upon the Court, nevertheless it may be helpful to know that the

draftsman of this legislation in a pamphlet issued by a legislative committee known as Commission for Survey of Municipal Financing of New Jersey explanatory of the statutes which are popularly known as the "Pierson Financial Legislation," says that the Legislature, in incorporating a grant of authority to appropriate for "general purposes," intended that such appropriation should be used *for retiring indebtedness* and for the purpose of accumulating a surplus with which to conduct the affairs of a municipality until the first half of the tax for 1919 is received. In this connection it is interesting to observe his comment

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"that a full year's Sinking Fund appropriation and a full year's Local School Budget should be provided in the short budget of the 1918 tax levy. It should also be noted that the full County Tax, the full State School Tax and the full State Road Tax to be levied by the County Board of Taxation against the district must be raised by the taxes collectible in 1918."

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POINT III.

As to redemption of bonds.

Respondents in this Court contend that the legislature intended to prevent the municipalities affected by this act from making appropriations to meet their obligations as they fell due.

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We know of no power under the law of postponing the payment of maturing obligations of the city. Hundreds of thousands of dollars of notes and bonds were issued by the affected municipalities which by their terms are required to be met or paid by appropriations included in the tax levy under review.

Countless bonds, serial and term, have been issued in past years and made to mature in the

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interim period. The "Pierson" legislation forbids the refunding of such obligations. That is, as we construe it. Whether it does or not, we insist that it never was the legislative intent to prevent the municipalities from appropriating to redeem them as they mature.

Insofar as the Court below sustains the assessment in those respects its judgment should be affirmed—but reversed as to its finding that the
 10 assessment was in any respect illegal.

JOHN MILTON,
 EDWARD P. STOUT,
 of Counsel with the Mayor
 and Aldermen of Jersey City.

JOHN J. FALLON,
 Of Counsel with
 County of Hudson.

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New Jersey Court of Errors and Appeals.

SAMUEL W. GARRISON, *et al.*,
Prosecutors Below,
Respondents-Appellants,

against

THE MAYOR AND ALDERMEN OF
JERSEY CITY, *et al.*,
Respondents Below,
Appellants-Respondents.

On Appeal from
Supreme Court.

BRIEF AND POINTS OF PROSECUTORS BELOW.

Statement.

In order to avoid confusion I will in this brief refer to the prosecutors below as the "Prosecutors" and to the respondents below as the "Respondents."

The writ of certiorari in this case was granted by Mr. Justice Swayze, to review the tax assessment of \$17.30 per thousand on property of the prosecutors in the City of Jersey City. The case was argued before Justices Parker and Minturn, sitting in Part II of the Supreme Court. The judgment of the Supreme Court affirms the tax assessment in part and sets it aside in part.

An appeal to this Court was taken by the City of Jersey City and the County of Hudson from the whole of the judgment. The prosecutors

thereupon filed a cross appeal and appeal from that part of the judgment which affirmed the tax assessment.

Because of the importance of the case and the fact that the tax assessment becomes a lien on December 20, 1918, application was made to the Chancellor by the Corporation Counsel of Jersey City for the reconvening of this Court to specially hear this cause on appeal.

The tax rate of \$17.30 is made up as follows:

State School Tax	\$2.37
State Road Tax	1.00
County Tax	4.87
Municipal or Local Tax	9.09

Total tax rate per thousand	\$17.30
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(See testimony of Joseph P. McLean, p. 95.)

The Hudson County Board of Taxation, on October 11, 1918, fixed the tax rate of \$17.30 on property in Jersey City, including that of the prosecutors, as above stated.

The preceding tax assessment on property in Jersey City became a lien and was collectible on December 20, 1917, and amounted to a rate of \$21 per 1,000, made up as follows:

State School Tax	\$ 2.59
State Road Tax	1.00
County Tax	5.17
Municipal or Local Tax	12.24

Total tax rate per 1,000	\$21.00
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(See testimony of Joseph P. McLean, p. 97.)

The State School Tax of \$2.59 was the State School Tax for one year.

The State Road Tax of \$1.00 was for the first annual tax under Chapter 16 of the Laws of

1917 as amended by Chapter 175 of the Laws of 1918.

The County Tax of \$5.17 included the budget and appropriations for the fiscal year of Hudson County, beginning December 1, 1917, and ending November 30, 1918.

The Municipal or Local Tax of \$12.24 was for the budget and appropriations for the fiscal year of Jersey City beginning December 1, 1917, and ending November 30, 1918, and the Jersey City school budget and appropriations for the fiscal year beginning July 1, 1917, and ending June 30, 1918, and included in the aforesaid budget and taxing ordinance of Jersey City.

The Municipal Finance Acts of 1918, known as the Pierson Laws, provide that the fiscal year of all municipalities shall be uniform and coincide with the calendar year. This was effected by Chapter 238 of the Laws of 1918.

Under this statute the beginning of the fiscal year of Jersey City and Hudson County was changed from December 1 to January 1, a change of one month. Section 4 (3), which I shall refer to in this brief as Section 3, provides for the financing of municipalities or counties whose present fiscal year has been changed by the provisions of the Act "for the period between the close of the current fiscal year or the end of the period for which appropriations are made, to the thirty-first day of December following," which, in both Jersey City and Hudson County, is a period of one month, to wit, the month of December, 1918.

The Commissioners of Jersey City proceeded to adopt a budget on August 6, 1918, "for the fiscal year ending December 31, 1918." The budget shows the amount to be raised by taxation for local purposes to be \$1,955,995.79. There was

also included in the budget and taxing ordinance the sum of \$1,331,390.34 for Jersey City school purposes.

In August, 1918, the Commissioners caused to be certified to the Hudson County Board of Taxation a copy of the taxing ordinance and budget providing for the raising of these amounts totalling \$3,287,386.13 by taxation (p. 90).

The Board of Chosen Freeholders of the County of Hudson caused to be certified to the Hudson County Board of Taxation a certified copy of a resolution adopting a budget "for the period commencing December 1, 1918, and terminating December 31, 1918," amounting to \$3,563,492.22 and providing that that amount, and the additional sum of \$2,000 for the Second Judicial District Court of Hudson County, less resources of \$17,000, be raised by taxation (pp. 100-109).

The Hudson County Board of Taxation, on October 11, 1918, passed resolutions fixing the tax rate of \$17.30 on property in Jersey City. This tax rate was based on the taxing ordinances and budgets of Jersey City and Hudson County heretofore referred to (p. 95).

The prosecutors contended below and now contend, that the entire tax rate should be set aside and, in the event that it should be determined that part of the said tax rate is proper and legal, that the illegal portions thereof should be set aside and a proper assessment made under the direction of the Court, and as provided by law.

Questions Involved.

The questions involved are:

(1) As to whether the entire tax rate should be set aside.

(2) As to what portions of said tax rate are illegal and should be set aside.

GROUND OF APPEAL.

Respondents'.

The grounds of appeal of the respondents will be printed in the record. They can be summed up as attacking that part of the judgment which set aside the tax assessment in part.

Prosecutors'.

The grounds of appeal and cross-appeal filed by the prosecutors will be printed in the record. They can be summed up as attacking that part of the judgment which affirms the tax assessment.

A further concise statement of prosecutors' grounds of appeal and cross-appeal should perhaps be made here.

The prosecutors contend:

(1) That the Supreme Court erred in not setting aside and vacating the entire tax assessment.

(2) That the Supreme Court erred in affirming the inclusion in said tax assessment of the State School Tax.

(3) That the Supreme Court erred in affirming the inclusion in said tax assessment of the State Road Tax.

(4) The Supreme Court erred in affirming the

inclusion in said tax assessment of the pro rata portion of appropriations for local school purposes.

(5) That the Supreme Court erred in ordering and adjudging that there could be a tax assessment on property in Jersey City which becomes a lien on December 20, 1918, for local purposes of Jersey City; for County purposes; for general purposes as defined by it in the judgment; for appropriations for local school purposes; for State Road Tax, and for State School Tax.

(6) That the Supreme Court erred in not defining the term "general purposes" with sufficient particularity so as to exclude innumerable items appearing illegally in the budgets of Jersey City and Hudson County, and that its judgment does not strike out all of the items and appropriations appearing illegally in the taxing ordinance, resolutions and budgets of the City and County.

ARGUMENT.

Statement.

In view of the fact that I have not a copy of the brief or briefs for the respondents before me, I will not attempt to draw this brief as a reply to their brief or briefs, but will attempt to cover the entire situation as clearly as I can.

The prosecutors in the court below filed 19 reasons why the tax assessment should be set aside, and have in this court filed 11 grounds of appeal. I will not here take up each of the reasons and grounds of appeal separately, but will endeavor to treat all of them under the following heads, the prosecutors relying upon each and every one.

Much of the argument on some points applies to other points. I have not the time to rearrange the brief as it must get into the printer's hands at once. I will, therefore, ask the Court to consider the argument as a whole, bearing on the entire question at bar.

POINT I.

The entire tax assessment should be set aside.

A.

The Hudson County Board of Taxation had no power or authority to strike or fix the tax rate.

This point is fully covered in my argument under the other subdivisions of Point I.

B.

The Board of Commissioners of Jersey City had no power or authority to pass and adopt the tax ordinance and budget brought up by the writ on which the tax assessment is based.

This brings us directly to the construction of Section 3, of Chapter 238, of the Laws of 1918. That section provides that:

"in the budget and tax levy next following the passage and approval of this act, any municipality or county whose fiscal year or the period for which appropriations are made is altered by this act, is authorized to make appropriations for local purposes * * * for the period between the close of the current fiscal year or the end of the period for which appropriations are made and the thirty-first day of December following."

As the record clearly shows, the annual tax ordinance and budget of Jersey City for the fiscal year commencing December 1, 1917, and ending November 30, 1918, was duly adopted in August, 1917; duly certified to the Hudson County Board of Taxation; the tax rate duly fixed by the Hudson County Board of Taxation; and the tax became a lien and collectable on December 20, 1917.

Chapter 238 of the Laws of 1918 was approved on March 4, 1918, and *became effective immediately*. The next budget and tax levy to be adopted in Jersey City following the passage of that act was, under the provisions of the Pierson Laws, the budget and tax levy for the fiscal year commencing January 1, 1919, and ending December 31, 1919. Therefore the intention of the act is perfectly clear, that in the budget and tax levy next following, to wit, in the case of Jersey City, the budget and tax levy for the fiscal year commencing January 1, 1919, and ending December 31, 1919, there could be included appropriations for local purposes other than schools, for the period between the close of the current fiscal year and the 31st day of December following, to wit, in the case of Jersey City, the month of December. There cannot be any construction placed upon this act whereby it can be contended that Jersey City has the right to adopt a separate one month's budget.

There cannot under any possibility be read into this act such a provision or such an intention, *and of course a taxing act must be strictly construed*.

Furthermore, the fact that there was no intention for the making of a separate budget for the month of December is further evidenced by the fact that nowhere in the act is there any

provision as to *when the tax so levied was to become a lien.*

There is no question in my mind but that the intent of the act is clear, and that it was intended that in the next *annual* budget there could be included an appropriation for the period between the close of the current fiscal year and the 31st day of December following.

The tax ordinance and budget, as passed, adopted and certified to the Hudson County Board of Taxation, included the appropriations for school purposes for the fiscal year July 1, 1918 to June 30, 1919.

There is no provision whatever in Section 3 of Chapter 238 of the Laws of 1918 for the making of a separate budget or tax for school purposes.

Section 74 of the School Act, 4 Comp. Stat., 4746, provides for the including of the school appropriation in the same manner as other appropriations and the raising of such amount in the same manner as moneys for other appropriations for the city, etc.

Under this section, unquestionably, the next moneys raised in Jersey City for appropriations is the amount to be raised under a budget adopted for the year January 1, 1919, to December 31, 1919.

There is no question but that this statute refers to the regular annual budget and tax levy.

In Jersey City, as I have stated above, the next annual tax budget after the certification by the Board of School Estimate in June, 1918, to the City Commissioners, is the budget for the calendar year of 1919, and the taxes to be assessed under the Pierson Laws, to wit, Chapter 236 of the Laws of 1918 and Chapter 242 of the Laws of 1918.

That it was the intention of the Pierson Acts that there should be no separate budget and tax for local school purposes is also shown by the fact that if the tax for local school purposes is included in the special tax for December, *then there is no provision for the inclusion of any sum for any local school appropriations in the budget of 1919.* Chapter 242 of the Laws of 1918 provides that the budget must be adopted on or before February 24, 1919. The School Act provides for the certifying by the Board of Education of the amount of the appropriations asked for to the Board of School Estimate by May 15th and sending of a resolution of the Board of School Estimate fixing the amount of appropriations for local school purposes to the financial board of the City by June 15th. Therefore, under the construction placed upon the Pierson Act by the City and by the judgment of the Supreme Court, there would be included in the special tax in December an appropriation for the local school purposes for one year and none would be included in the 1919 budget and tax. That this is so is frankly admitted by Commissioner Gannon, the Director of Revenue and Finance of Jersey City, in his testimony (p. 150), and by General Collins, the Comptroller of the City of Elizabeth (p. 41).

A further reason why the tax assessment fixed by the Hudson County Board of Taxation, based upon the tax ordinance and budget of Jersey City adopted August 6, 1918, is illegal, is because there is no authority under any statute or law for the certification to the Hudson County Board of Taxation, or the acting upon by that they can only act on an *annual* tax ordinance or budget. The powers of the Hudson County Board of Taxation are purely statutory and

they can only act on an *annual* tax ordinance or budget from the City. Section 6 of Chapter 120 of the Laws of 1906, 4 Comp. Stat., 5119, is the section under which the City tax ordinance is certified to the County Board of Taxation. That section is express in its provisions, and provides for the certification to the County Board of Taxation of a copy of the *annual* tax ordinance or resolution.

The officials of the City evidently realized this, for they entitled their ordinance as if it were an ordinance for the fiscal year ending December 31, 1918; but there is no question from an examination of the ordinance and budget themselves, and the testimony of the Commissioners, that it is *not* an annual tax ordinance and budget.

Although the Board of Chosen Freeholders entitled their ordinance by the use of the word "Period" instead of "Fiscal Year," nevertheless, the same reasoning and argument under Subdivision "C" of Point I applies in respect to the County Taxing Ordinance and Budget.

C.

The Board of Chosen Freeholders of the County of Hudson had no power or authority to pass the tax resolution and budget adopted for the period ending December 31, 1918.

Prior to the adoption of Chapter 238 of the Laws of 1918 the fiscal year of the County of Hudson was the same as the fiscal year of the City of Jersey City, and the taxes were paid in the same way, that is, the taxes which became a lien and collectible on December 20, 1917, were for the appropriations for the fiscal year ending November 30, 1918.

The same reasoning and argument would apply that applies to the argument in respect to the City Taxing Ordinance and Budget under Sub-division "B" of Point I.

D.

The assessment on the property of the prosecutors is not based on valuations as of October 1, 1918, as provided by law.

If the contentions of the prosecutors are correct and the appropriations for the month of December, on which the tax assessment is based, should be included in the annual budget for the calendar year of 1919, then under the express provisions of Chapter 237 of the Laws of 1918 the tax rate should be determined on a valuation of the real estate as of October 1, 1918. (Sec. 401, p. 859, Laws of 1918).

The tax assessment in question was fixed on a valuation of the property in Jersey City, including the property of the prosecutors, taken as of May 20, 1918 (p.).

E.

There is no law under which there can be three budgets and tax assessments for the raising of revenues in the city of Jersey City and the County of Hudson for the period December 1, 1917 to December 31, 1919, or a period of two years and one month.

The argument under the preceding sub-divisions and particularly under "B" and "C" applies to this point.

There is no question, and it is testified to in the record by the Commissioners, that for the appropriations for these two years and one

month there are three tax budgets and assessments; or, putting it the other way, in order to pay the taxes for the appropriations from December 1, 1917, to December 31, 1918, there has been a tax levy and assessment which became a lien on December 20, 1917, and the present tax assessment in December, 1918, which makes two assessments and levies for a period of thirteen months; or in order to pay the taxes for the appropriations for the thirteen months from December 1, 1918 to December 31, 1919 there can be two tax appropriations and levies, which amount in fact to two annual tax levies and assessments for thirteen months. I contend that the language of the act does not provide for two annual tax levies for a period of thirteen months, or three tax levies for a period of two years and one month. Such a conclusion can only be arrived at by a violent construction of and a reading into the act of an intention which is clearly not sustained by the language used or the purpose to be accomplished.

The same reasoning applies to the County Budget and Tax Assessment.

As stated by the Supreme Court in its opinion the action of the city and county authorities would result in the taxpayers of Jersey City paying nearly three years' taxes in two years and one month (p. 194).

F.

The tax assessment improperly includes The State School and State Road Tax.

The State School and State Road Tax could not be assessed so as to become a lien in December, 1918, on the property of the Prosecu-

tors in Jersey City, but it should be included in the tax levy of Jersey City for the year commencing January 1, 1919.

Chapter 192 of the Laws of 1917, as amended by Chapter 175 of the Laws of 1918, provides for the assessment of an annual tax of one dollar on a thousand for State Roads. The provision of the statute is that the tax shall be assessed, levied, paid, and collected in the same manner as other taxes. While the statute says as other taxes are now assessed, nevertheless its provisions must be read in connection with Chapters 236, 238, and 242 of the Laws of 1918, and thereunder shall be payable in the same manner as other annual taxes in Jersey City. Under these acts the next annual tax assessment and levy in Jersey City is the tax for the calendar year 1919 and therefore it should be included in that tax.

The Supreme Court in its opinion calls the State Road Tax "the Road Tax of 1918." I contend that this term is improper. The law under which the Road Tax is assessed is Chapter 192 of the Laws of 1917, as amended by Chapter 175 of the Laws of 1918. The phraseology of both statutes is "There shall be *annually* for a period of five years from the *date* of the passage of this act, assessed" etc. The Act was passed on March 13, 1917. The first annual levy was included in the tax assessment becoming a lien on December 20, 1917. The second annual tax is not required to be assessed until within two years from the date of the passage of the Act, or by March 13, 1919. The holding of the Supreme Court that unless the Road Tax is collected in December, the State will get no Road Tax for 1918, I contend, is incorrect, for the

reasons that: first, there is no such thing as a Road Tax for the year 1918, second, the tax if included in the annual taxing ordinance and budget adopted before February 9, 1919, will be assessed within two years from the date of the passage of the Act, and third, that the State can lose nothing by the tax not being collected in December, 1918, as there must be "five annual assessments" of one dollar per thousand dollars of valuation.

The same reasoning applies to the State School Tax. After the passage of the Pierson Acts there was no provision under which the Hudson County Board of Taxation could fix a tax rate and an assessment could be levied to become a lien on December 20, 1918.

In relation to the State School Tax, the opinion says that the tax must be paid under the School Law to the State Treasurer by January 20, 1919, and to the County Collector by December 22, 1918. The Court therefore holds that this cannot be done unless it is assessed and collected in December, 1918.

It must be remembered, that the Pierson Laws were general laws, passed to cover a complete financial system for the running of municipalities and the collection of taxes. I understand that there was a law changing the fiscal school year introduced in the Legislature of 1918, accompanying the Pierson Laws, which law, however, did not succeed in passing. It can hardly be said that, because the school law as it existed at the time of the passage of the Pierson Laws and the Pierson Laws did not in all particulars agree, that that would be an excuse for the levying of a special tax for State School purposes in December, 1918. It may be possible that if it

be held that the State School Tax cannot be assessed and collected in December, 1918, that there will be two year State School taxes collected in the year 1919, but less harm would be done by this than there would be in levying and collecting a special tax for State School purposes in December, 1918. Furthermore, there would be no real difficulty in getting the money to the State Treasurer's hands, as the City could, without question, borrow the necessary funds after January 1, 1919, with which to pay it.

G.

The question of the necessity for the adoption of the budget at this time and the necessity of including the items under "fixed charges."

Most of the efforts of the City were to show that unless this tax assessment is sustained, that the financial affairs of Jersey City would be in chaotic condition. There are numerous statutes under which the City has acted in borrowing money. In addition to this, the testimony of Mr. Budd shows that in the time of Director of Revenue and Finance Brensinger, about two years ago, he temporarily financed the City by transferring moneys in the water account and afterward returning it, after the stringency had passed over.

I have dealt further with the question of the power of the City to borrow money, under Point IV.

POINT II.

The Supreme Court erred in affirming the inclusion in said tax assessment of the State School Tax.

I have covered this point fully under Subdivision "F" of Point I.

POINT III.

The Supreme Court erred in affirming the inclusion in said tax assessment of the State Road Tax.

I have covered this point fully under Subdivision "F" of Point I.

POINT IV.

The Supreme Court erred in affirming the inclusion of said tax assessment of the pro rata portion of appropriations for local school purposes.

I have covered this point fully under Subdivision "B" of Point I.

Section 3 of Chapter 238 of the Laws of 1918 expressly *excludes* appropriations for local school purposes. It says, in so many words, "other than school purposes."

The Supreme Court, in its opinion dealing with the question of State school taxes, says, "The fiscal year Act [Ch. 238, P. L. 1918] is not to the contrary in respect to this school tax. It does not mention it [State School Tax] *and does mention local school appropriations.*" Yet when the Supreme Court came to enter its judgment it affirmed the portion of the tax assessment for

local school appropriations. The testimony shows that the rate for local schools is \$3.58, one-fifth of the entire assessment. Yet the judgment says it should be included in this *ad interim* budget for one month, although if it is, no appropriations for local schools can be included in the next annual budget for the entire year of 1919.

The City contended before the Supreme Court that unless the local school appropriations for the fiscal year commencing July 1, 1918, and ending June 30, 1919, were included in this tax assessment, the schools would be left without money after December 31, 1918, and would have to close. It is a matter of common knowledge that the City has some credit. That it is not necessary to pay cash for every purchase on the day of purchase. The bills for January can be paid in January or in February. That argument has just as much force as would an argument that because the budget for the year January 1 to December 31, 1919, will not be adopted until the third or fourth week in January, all the departments of the city government will have to shut up shop from January 1 until the budget is adopted. *While it is true that school teachers' salaries are paid semi-monthly, the same is true of all salaries paid to city employees in all the departments, as the police, firemen, street cleaners, employees of the Street and Water Department, Department of Parks and Public Property, City Hospital, and even the salaries of the City Commissioners themselves.*

As a matter of fact, this has been taken care of by the Legislature under Section 12 of Chapter 242 of the Laws of 1918, wherein it is provided that the City may borrow moneys in anticipation of the tax revenues levied or to be levied. That particularly is this so is shown by the fact

that the Legislature was careful to leave out the words "other than school purposes," which appear so frequently in other portions of the Pier-son Laws.

The City contended further, that there would be a default on the notes which had been issued by the School Board under authority of the Board to borrow money for a period of six months. That this is not so is evidenced by the fact that under Section 12 of Chapter 242 of the Laws of 1918 and Section 21 of Chapter 192 of the Laws of 1917, it is provided that "it shall be lawful to borrow the full amount of the interest or the principal of the public debt as the same shall fall due (provided no other provision has been made for the payment thereof)." The financial board of the City also has wide powers for the borrowing of money in anticipation of taxes to be levied, under Section 132 of the Charter of Jersey City, adopted March 31, 1871, and the amendments and supplements thereto. The record further shows that the City has had no difficulty in borrowing money on temporary loan bonds or other evidences of indebtedness for almost every conceivable purpose. As was aptly said by Mr. Justice Minturn on the argument before the Supreme Court, he had never found any difficulty in the City temporarily borrowing money from the banks. Justice Minturn spoke with the authority of long experience as Corporation Counsel of the City of Hoboken.

POINT V.

The tax rate for local purposes other than schools of Jersey City and the county tax rate are illegal because they exceed the rate for like purposes in the next preceding tax levy.

The judgment of the Supreme Court properly sets aside the tax assessment so far as it "includes a rate of taxation for local purposes of Jersey City and County purposes in excess of one twelfth of the annual rate for such purposes for the fiscal year beginning December 1, 1917, and ending November 30, 1918" (pp. 196-7). The reasoning of the Supreme Court leading to this conclusion is found in its opinion (p. 193).

The City and County have appealed from this finding of the judgment. There is no question but that, as the Supreme Court states in its opinion, any other construction *savors of absurdity*, and that the judgment, so far as it sets aside the tax assessment, should be affirmed.

The question remaining is as to whether, under the fiscal year act of 1918, there can be a separate tax assessment in December, 1918, for these appropriations for the month of December, or whether they must be included in the regular annual budget to be adopted in January or February, 1919, as I have contended under Point I.

Section 3 of Chapter 238 of the Laws of 1918 contains an express provision:

"That the amount to be raised by taxation for local purposes other than schools, in the case of municipalities, and for county purposes in the case of counties, shall not be such as to cause the rate in the tax levy for such local or county purposes to exceed the rate for like purposes in the next preceding tax levy."

The tax rate for the preceding year, to wit, for the fiscal year from December 1, 1917, to November 30, 1918, for local purposes other than schools, in Jersey City, was \$9.85. The tax rate for local purposes of Jersey City other than schools under the present tax assessment is \$5.51, or nearly sixty per cent. of the tax rate for the entire preceding year (p. 98).

The tax rate for county purposes for the preceding year, to wit, from December 1, 1917, to November 30, 1918, was \$5.17. The tax rate for county purposes under this present assessment is \$4.84, or over ninety per cent. of the tax rate for the entire preceding year (p. 98).

The contention of the prosecutors is that the tax rates for both local purposes of Jersey City, other than schools, and county purposes, for the month of December, are in excess of and in violation of the express provisions of Chapter 238 above quoted.

The contention of the respondents is unquestionably, from the manner in which the appropriations were made, that the intention of this provision was simply that the tax rate for this one month of December should not be in excess of the last preceding tax rate for the entire year. In this contention they are absolutely in error. It certainly cannot be said that the Legislature intended, in fixing this limit, that in cases like Jersey City and Hudson County, where the period between the current fiscal year and the 31st day of December was only one month, that the limit of the tax rate should not be greater than the tax rate for the entire preceding year. Such a provision would be ridiculous and refutes itself. Counsel for the respondents have interjected into this case the cases of other municipalities, in some of which the

elapsed period amounts to six months, and in the case of Bayonne, eight months. Can it be said that the Legislature intended that this proviso should apply differently to Jersey City and Hudson County, with only one month to provide for, than it does to these other municipalities with six and eight months to provide for? The only construction that can be placed upon this proviso is that, in the case of Jersey City and Hudson County, where the period to be provided for is only one month, the rate should be the proportion that that period bears to the tax rate for the entire preceding year, or one-twelfth of the preceding tax rate; and in the cases of municipalities to provide for six months, the proportion that that period bears to the entire preceding year, or one-half of the preceding tax rate; and the same calculation in respect to municipalities where the period is for eight months.

A construction such as the taxing authorities of Jersey City and Hudson County have placed upon this act tends to create fraud; and there is no question but that such was not the intention of the Legislature in passing the act.

A careful reading of the act will show that the Legislature was careful to provide the comparison to be made and the proportion of the tax rate for the same period in the preceding year, in the language used. The act does not say that the tax levy shall not exceed the preceding tax levy, or that the tax rate shall not exceed the next preceding tax rate. What the act does say is, that the *rate* shall not exceed the *rate* for like purposes in the next preceding tax levy.

Any other construction of this proviso is arbitrary, unsustained by the act, and tends to

create a condition of fraud on the taxpayers, and is so absurd as to be without rhyme or reason.

The rate in the tax assessment for local purposes of Jersey City, other than schools, being approximately sixty per cent. of the tax rate for the entire preceding year and approximately seven times the rate of tax for like purposes in the next preceding tax levy for a period of one month, is absolutely illegal and should be set aside.

The rate in the tax assessment for County purposes being over ninety per cent. of the tax rate for the entire preceding year for County purposes and over eleven times the rate of tax for like purposes in the next preceding tax levy for a period of one month, is absolutely illegal and should be set aside.

POINT VI.

The Supreme Court erred in not defining the term "general purposes" with sufficient particularity so as to exclude the innumerable items appearing illegally in the budgets of Jersey City and Hudson County.

The evidence shows that there was included in the item "Fixed Charges" in the budget of Jersey City, the sum of \$329,000 for the retirement of temporary loan bonds issued under Chapter 142 of the Laws of 1918, for the policemen and firemen salary increases, and that the bonds were made payable on December 31, 1918, by their own terms. Under the technical construction of the term "General Purposes" as defined by the judgment of the Supreme Court, these bonds became due in December and could there-

fore be included in the tax levy. However, there is an express provision in the statute under which they were issued, that "provision for the retirement or payment of such bonds shall be made in the annual budget of such city adopted next after the issuance of such bonds." The annual budget for the city adopted next after the issuance of the bonds is the annual budget to be adopted for the year 1919, and provision for the retirement of these bonds must be made in that budget, and cannot be included in this tax levy.

Under the term "General Purposes," as defined by the judgment of the Supreme Court, temporary loan bonds payable on demand to the extent of two or three hundred thousand dollars, some or all of which are held or controlled by the Sinking Fund Commission of Jersey City, could be included in this budget, although, as the evidence shows, they had been continued from year to year for the past two years, no demand for payment has been made and unquestionably would not be made by the Sinking Fund Commission, appointed by the City Commissioners, two of whose numbers are the Mayor and the Director of Revenue and Finance, unless requested by the city authorities.

POINT VII.

The judgment of the Supreme Court is erroneous in that it permits the inclusion of the sinking fund appropriations for both the city and county which would have been required to be made within the month of December, 1918, under the law in force January 1, 1918, whereas, at the most, only one-twelfth of said sinking fund could be included.

It is respectfully submitted, that this budget and tax levy is in no sense a full year's budget and tax levy, and that it is improper to include a full year's sinking fund in it. At the most, it seems to me, that no reasonable construction of the statute would permit the inclusion of more than one-twelfth of the yearly sinking fund in the tax levy.

POINT VIII.

Assuming that the county and city had the power to adopt a separate budget and tax levy, there are included in both budgets and tax levies innumerable illegal items which could only be included in the next annual budget and tax levy.

I will confine myself in this brief to pointing out only some of the items which unquestionably were not contemplated to be included in a separate budget and tax levy to take care of the one month in the case of Jersey City and Hudson County. The items are numerous and it seems to be that if there is power or authority for the adoption of a separate budget, it would require an entirely new budget and assessment to be submitted to the Court for its approval.

The County Budget.

There is included in the County Budget under Item 37 (p. 92), \$996,181.58 for payment of bonded debt falling due. Unquestionably this item should not be included in the separate budget for current expenses for the one month of December. The testimony of Mr. O'Mara on pages 112-113 clearly shows that this item was put in the separate budget for the sole purpose of putting it in some budget that would not abnormally increase the tax rate. On page 113 he very frankly states that "we took advantage of this Chapter 238."

There is also included in the County Budget, under Item 41, the sum of \$970,672.68, for the payment of sinking fund requirements. Mr. O'Mara, on Pages 114-115 clearly shows that this item was also put in for the same reason and had nothing to do with a proper budget for the current expenses of one month. On page 115 he frankly states that a reason why this item should not be included in the annual tax budget for 1919 is because it is "too large an amount."

There is included in the County Budget under Item 42 the sum of \$600,000 as a special appropriation for the purchase of site and part of cost of new hospital for the insane (p. 108). When questioned about this item, on page 115 he admits that it was not for expenses of the County, but was for the purchase of a site which has not been determined upon as yet, and part of the expense of this new institution to be purchased and erected some time in the future.

Under Item 43 there is included in the County Budget the sum of \$350,000 as an appropriation for the improvement of the Newark Turnpike (p. 108). On page 116, Mr. O'Mara's testi-

mony shows that this was not any appropriation for current expenses for the month of December, but was for the payment of the expenses of an improvement which was to be subsequently made; although the regular way was to issue bonds, and in fact \$250,000 of bonds had already been issued on this improvement. This appropriation was in addition to the bonds and was the estimated balance necessary for the entire improvement, and that they hoped to get the balance from the State.

The same reasoning applies to several of the items which were included for the payment of deficiencies on the preceding year.

The City Budget.

The Commissioners of Jersey City, and particularly Commissioner Gannon, whose testimony I have not before me at the present time, shows how they approached the adoption of this budget. Mr. Gannon stated that he considered that the budget was an annual budget, with the exception of the appropriation of \$449,000 for the month of December. And even as to this appropriation, there are items, such as the item of \$20,000 for municipal advertising, and the item of \$35,000 for railroad tax appraisal, etc., which unquestionably will not be expended for the month of December.

Commissioner Gannon testifies that so far as the fixed charges were concerned, the budget was an annual budget. The fixed charges in the budget amounts to over \$1,500,000 as against \$727,000 for the entire preceding year. It will be noted that in the appropriation for the preceding year there was no interest on temporary loans; no provision for general bonds due; no provision for temporary loan bonds due; no

provision for temporary improvement bonds due; no sinking fund instalments; no interest on temporary improvement bonds and promissory notes; no amount for abatement of taxes; and no amount for deficit in miscellaneous revenue for the preceding year.

Included in the "Fixed Charges" is a large amount of interest and bonds which are not due until sometime during the year 1919. If the City's Budget is correct, it might just as well be contended that under the term "General Purposes" there could be included all of the necessary appropriations for the year 1919, or such portion thereof as the city authorities might chose to include.

The testimony in relation to these items is voluminous and I will enlarge upon it in my argument that none of the items under the heading "Fixed Charges" should or could be included in this budget. The officials of the City have testified that so far as these items were concerned, it was an annual budget. I contend that no part of these items, aggregating \$1,500,000 under the heading "Fixed Charges" could be included in this separate budget for the current expenses for the month of December; and, in any event, that nothing but a very small proportion could be included.

Both County and City Budgets.

The items which I contend have been illegally put in both budgets are so numerous and complicated that it would require an accountant and the expenditure of a great length of time to clearly set them forth.

However, it seems to me that there is a practical way in which the court can deal with these two budgets, and that is, that under the powers

vested in it by the law and the statutes to review tax assessments, the court can determine the maximum tax rate that could be levied for City purposes other than schools, and for County purposes, as in the case of the City, one-twelfth of the tax rate for the same purposes for the preceding year, and in the case of the County, one-twelfth of the tax rate for the preceding year, and direct such to be the proper rates for taxation for County purposes and for local purposes of Jersey City, other than school purposes.

I, of course, contend that the City had no right to include in this separate budget the amount appropriated for local school purposes, and have considered that under another point.

POINT IX.

The tax ordinances, budgets and tax assessment brought up by the writ are a fraud upon the prosecutors.

Under this head I would ask the Court to particularly scrutinize the testimony of Mr. O'Mara, in reference to the County budget, and the testimony of the Commissioners in reference to the budget for Jersey City. I will take up the County Budget first.

The County Budget.

While the title of the resolution does not say that it is for a fiscal year, nevertheless it is careful to state that it is for the period ending December 31, 1918. It does not state that it is for County purposes for a period of one month or that it is a special budget under Chapter 238 of the Laws of 1918.

The mere fact that the budget amounts to approximately \$3,500,000 as against an appropriation of \$3,900,000 for the entire preceding year is almost conclusive of fraud.

Schedule A purports to be for appropriations, the expenditures of which are under the control of the Board of Freeholders (p. 161), nevertheless, when Mr. O'Mara is questioned upon this schedule he admits that a number of these items were to take care of deficiencies which existed on December 1, 1918 (p. 105).

Schedule B of the budget is found on pages 106 to 109, and is for appropriations, the expenditure of which is not controlled by the Board of Freeholders. When questioned about the items in Schedule B he frankly admits that a large number of items are to take care of deficiencies of the fiscal year ending November 30, 1918, although it is not so stated in the budget. As for instance, \$15,000 or \$20,000 of the \$58,000 appropriated under Item 24 for the Tuberculosis Hospital, and the item of \$100,000 for the expenditure of the courts of the County, although the appropriation for the entire preceding fiscal year for that purpose was only \$291,000 (p. 110). The same in relation to the appropriation of \$50,000 for the State Board of Children's Guardians (p. 110).

Schedule C, however, amounting to \$2,969,133.22, is the main schedule in which the Freeholders have loaded up the budget, taking advantage of having three tax levies for a period of two years and one month. Starting at page 112 Mr. O'Mara testified in relation to the payment of the bonded debt amounting to over \$996,000 and shows where these amounts were included in this particular budget to cover bonds

which had been issued over a period of five or six years.

On page 113 he testified as follows:

“Q. Take for instance that bond (election bond), why was not that bond taken care of in the next annual budget for that year?
A. The law did not require it.

And again on the same page:

“Therefore we took advantage of this Chapter 238 and reduced the bonded debt of the County over \$996,000.”

On page 113 he testified in the same way in respect to the payment of overdrafts in the Alms House which had been carried since 1906.

On page 113 he explains the payment on a sinking fund of \$970,672.58.

On page 115 his testimony in respect to the sinking fund appropriation is as follows:

“Q. It is practically the annual appropriation for the sinking fund? A. No, it is not. It is much larger than the annual appropriation. It was based on an estimate of the Sinking Fund Commission of an amount to bring the sinking fund up to par.

“O. As a matter of fact, it had nothing to do whatever with the payment of the expenses for one month? A. Expenses? This is not a thing that comes under expenses.”

And on page 115:

“Q. Is there any reason why it should not be included in the annual tax budget for 1918? A. Yes.

“Q. Why? A. Too large an amount.”

And then the final straw: The Board of Chosen Freeholders evidently had no limit in mind except keeping the appropriation within the

limits of the appropriation for the preceding year.

They therefore, under Item 42, included the sum of \$600,000 for the purchase of site and cost of new hospital for the insane. Mr. O'Mara's testimony on pages 115 and 116 is very illuminating on this item. They appropriated the sum of \$600,000 when the site had not only not been purchased but has not been determined upon as yet.

The last item, of \$350,000, an appropriation for the improvement of the Newark Turnpike, on which they had previously issued \$250,000 in bonds and after making this appropriation they intended to get the balance of the cost from the State.

Mr. O'Mara, on page 116, is frank in stating that it is not expected to expend that amount in the month of December.

There is no question but that the Board of Freeholders seized upon a construction of Section 3 of Chapter 238 which to my mind is ridiculous and used the opportunity to "clean up," being careful to keep within what they construed was the amount that would not make the tax rate greater than the tax rate for the entire preceding year.

The City Budget

The same practice adopted by the Board of Freeholders was adopted by the City Commissioner in making up its budget.

It does not take more than a glance at the budget to determine this. The law requires the budget to be advertised. The taxing ordinance and budget of Jersey City was advertised, but it was so worded that I submit the advertisement was not in accordance with any law, but

was intended to defraud the taxpayers of Jersey City and to camouflage the situation in every respect.

The title of the ordinance says that it is an ordinance for the fiscal year ending December 31, 1918.

The law requires a comparison of appropriations with the last preceding appropriations. There is a comparison; but it appears to be a comparison by years and not as one month is to twelve months. One column is entitled "Appropriations to December 31, 1918"; the other column is headed "Last Appropriations." In the first column is placed the amounts of the appropriations for one month *without any statement that it is for one month only*; and in the second column is a comparison with appropriations for the entire preceding year.

An examination of the budget shows that the large item included under "Fixed Charges" was included for the sole purpose of juggling the tax rates. The appropriations under this heading amount to over \$1,500,000; for the preceding year they amounted to only \$727,000.

The largest item is for temporary loan bonds, most of which had been issued in the preceding year, and all of them issued since 1916.

Briefly, the testimony brought out on behalf of the City in respect to approximately \$329,000 of these temporary loan bonds, being issued for the increased salaries of police and firemen, and the contention of the City and its Director of Revenue and Finance is that it was mandatory upon them to put these temporary loan bonds in the present budget. A reading of the act under which these bonds were issued, being Chapter 142 of the Laws of 1918, shows that their contention is not correct, but that, on the other

hand, it is expressly provided that provision for the retirement or payment of these bonds shall be made in the annual budget of such city adopted after the issuance of such bonds, and it is further provided that the bonds may run to December 31, 1919.

There is no construction which can be placed upon this act which makes it mandatory to include these bonds in the budget adopted by Jersey City under Section 3 of Chapter 238 of the Laws of 1918.

Take the item of \$20,000 for municipal advertising including even though in the \$674,000, Temporary Loan Bonds there was included a bond of \$20,000 for municipal advertising issued back in January or February, 1918, which the Commissioner of Revenue and Finance testified had not been spent and that these items would probably go into the Surplus Revenue Fund (pp. 132-146).

There is no question but that the City Commissioners included these alleged fixed charges and other amounts in this budget for the reason that they only provided in the budget for current expenses for one month, and that they would have three tax rates and assessments with which to pay the appropriations covering a period of two years and one month.

POINT X.

Laches.

Counsel for the City on the application for this writ and also on an application of another prosecutor for a writ to review the entire budget and tax assessment on behalf of all of the citizens and taxpayers of Jersey City, and also on the argument before the Supreme Court, raised the question of laches.

It is respectfully contended that there has been no laches on the part of the prosecutors.

The Supreme Court in its opinion clearly and concisely dealt with the question of laches, and, I think, conclusively disposed of it.

Mr. Garrison testified that the first he knew of the tax assessment was from a notice in the newspaper after October 11, 1918, that the County Board of Taxation had fixed the tax assessment. He stated that the amount of the tax and the size of the tax rate for a period of one month for local and county purposes was in this manner brought to his attention, and also by other persons whom he represented, he being a real estate agent. That the matter then became agitated and a meeting of taxpayers was called for the evening of October 29, 1918.

Application was made for a writ to review the entire budget by one taxpayer on behalf of all of the taxpayers of Jersey City, to Mr. Justice Swayze, on October 31, 1918, which application was denied. This application was renewed before Mr. Justice Swayze on Saturday, November 1, and at the same time an application was made on behalf of the prosecutors for the present writ. At the request of counsel for the City, Mr. Milton, the city counsel, being elsewhere engaged, Mr. Justice Swayze stated that he was inclined to grant the present writ but would withhold his action thereon until Monday, November 4, at the Court House in Jersey City, when the city counsel could be present. Mr. Milton telephoned Justice Swayze Saturday afternoon or evening that it would not be necessary for him to come to Jersey City on Monday, as he considered the matter and had determined not to oppose the granting of a writ by a single taxpayer. The application was made before Mr. Justice Swayze on Monday,

November 4, in the presence of the city counsel, who stated that he had no particular objection to the granting of a writ to review the tax assessment on a single taxpayer's property.

Furthermore, if the contentions of the prosecutors are correct, the tax assessment and the tax ordinances and budgets on which it is based are entirely illegal and unwarranted under the law, and the prosecutors could, if they chose, wait until the tax became a lien or until proceedings were taken to sell their property under the tax assessment, and then contest its validity.

In the case of *Livesey v. Secaucus*, 97 Atl., 950, this Court, Justices Parker, Minturn and Kalisch sitting in a *per curiam* opinion, said:

"This is a certiorari of an alleged confirmation by the Borough of Secaucus of a sewer assessment. It is objected in the first place that the writ as applied for and allowed after the expiration of the thirty-day limitation prescribed in the Borough Act. *Cook v. Allendale*, 79 N. J., Law 285; 75 Atl., 769. This objection should no doubt prevail if there was a confirmation in due form of law, but the prosecutrix maintains that there was not, and we agree with her for two reasons."

The prosecutors contend that there is absolutely no warrant in law for the tax assessment brought up or for the adoption of the tax ordinances and budgets on which it is based. If the tax assessment or any part of it is illegal, no harm can be done at this time by setting it aside, as the tax does not become a lien until December 20th. As a matter of fact, the tax assessment rolls for Jersey City had not at the time of the argument been finally extended and sent to the County Board of Taxation or confirmed by the said County Board (p. 99).

If the contention of the prosecutors is correct and the tax ordinances and budgets should be included in the next annual tax ordinances and budgets, to wit, the tax ordinances and budgets for the fiscal year commencing January 1, 1919, then the time has not yet arrived for action to be taken in passing and adopting such tax ordinances and budgets.

POINT XI.

Effect of setting aside tax assessment on other municipalities.

There was considerable testimony offered on behalf of the City as to the procedure adopted by other municipalities in making their budgets for the period between the end of the old fiscal year and December 31st, 1918. This testimony was duly objected to on the ground that this certiorari is simply to review and set aside the tax rate on property in Jersey City, and that any testimony in relation to other municipalities is entirely irrelevant and immaterial, and of no effect whatever. However, in none of these municipalities were the conditions similar to Jersey City or Hudson County. In the majority of them there was a six months' period, and in two cases an eight months' period. There did not appear to be any attempt to incorporate in the budgets of the respective municipalities enormous amounts because of the fact that it was a short budget, similar to what was done in the case of Jersey City and Hudson County. In the publication, as shown by the testimony, of the budgets of these municipalities, the comparisons were made between the intervening period and the preceding year, as in the case

of Passaic, a six months' rate and the entire preceding year.

The testimony in respect to these municipalities shows that the conditions are entirely dissimilar from the conditions existing in the tax assessment of Jersey City and Hudson County.

It seems to me that this testimony was offered by the City solely for the purpose of confusing the issues in this case, and that this testimony should be entirely disregarded by the Court in determining the validity of the present tax assessment.

POINT XII.

Certiorari of the entire levy and ordinances.

As stated under the point dealing with the question of laches, application was made to Mr. Justice Swayze, on behalf of a citizen and taxpayer of Jersey City, for a certiorari of the entire tax levy and ordinances. This application was denied by Mr. Justice Swayze, with permission, however, to apply to the Supreme Court. Application for this writ was thereupon renewed before Part II at the opening of the Supreme Court. The allowance of the writ was reserved until the determination of the present case. The concluding paragraph of the opinion of the Supreme Court deals with respect to this writ (p. 195).

After the handing down of the opinion by the Supreme Court a writ to review the entire tax levy and ordinances was allowed by the Supreme Court, Mr. Justice Parker signing the allocatur on November 30, 1918. This writ has been returned; reasons duly filed and served and dep-

positions taken and the record perfected. Mr. Justice Parker intimated that the Supreme Court would reserve entering judgment in that case until the determination by this Court of this case.

CONCLUSION.

I respectfully submit that the judgment of the Supreme Court, so far as it sets aside the tax levy in certain particulars, should be affirmed. The only difficulty is that it does not go far enough, in that it does not set aside the entire tax assessment, and in that it specifically affirms parts of said tax assessment, which should not be included in it. Those items which should not be included in it are covered by this brief, as, for instance, the local school tax, the State Road Tax, the full year's sinking fund, etc. There is no question but that the judgment and opinion of the Supreme Court, as to the meaning and intention of the statute that the tax rate for the local purposes of Jersey City and the County purposes of Hudson County cannot be more than one-twelfth of that for the preceding year, is correct and unassailable. I cannot do better than to say, in the words of the opinion of the Supreme Court, that any other construction "savors of absurdity."

The Supreme Court in its opinion aptly says,

"that the intent of the Legislature in providing the change of fiscal year and for the interim was to enable the cities and counties to borrow what was needed for ordinary current expenses during the interim, *and decidedly not to put into their hands a weapon of oppression to the taxpayers.*"

It is astounding to consider that the tax rate of the assessment is approximately 85 per cent.

of the preceding year's outlay, as stated in the opinion of the Supreme Court.

I have been referred to an old saying:

"In levying taxes, as in shearing sheep, it's well to stop when you get to the hide."

It is respectfully submitted that that part of the judgment of the Supreme Court setting aside the tax assessment should be affirmed, and that that part of the judgment which affirms the tax assessment should be reversed, and the Supreme Court directed to set aside the entire tax assessment, or such additional parts thereof as this Court may deem proper.

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