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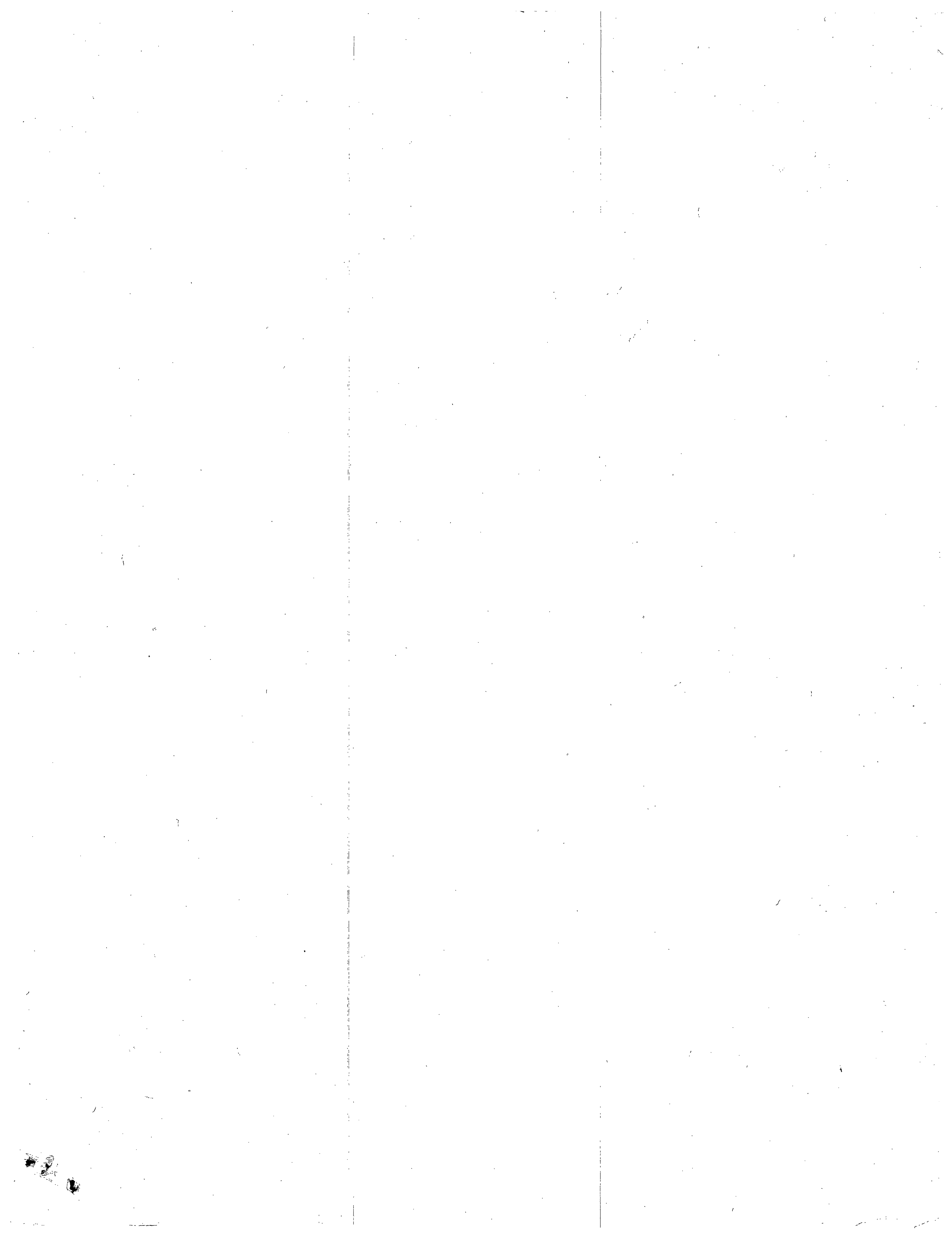
TAXATION OF PERSONAL PROPERTY IN NEW JERSEY

PART I

ORIGIN OF CHAPTER 51

New Jersey State Library



Chapter 51, Laws of 1960 was the product of a long search. For more than 30 years, New Jersey had sought a real estate assessment standard that would recognize differences in local practices and facilitate equalization of real estate assessments more realistically than under the traditional "true value" standard. Closely related to that goal had been the desire to establish a workable basis for assessing tangible personal property according to measurable standards capable of equalization.

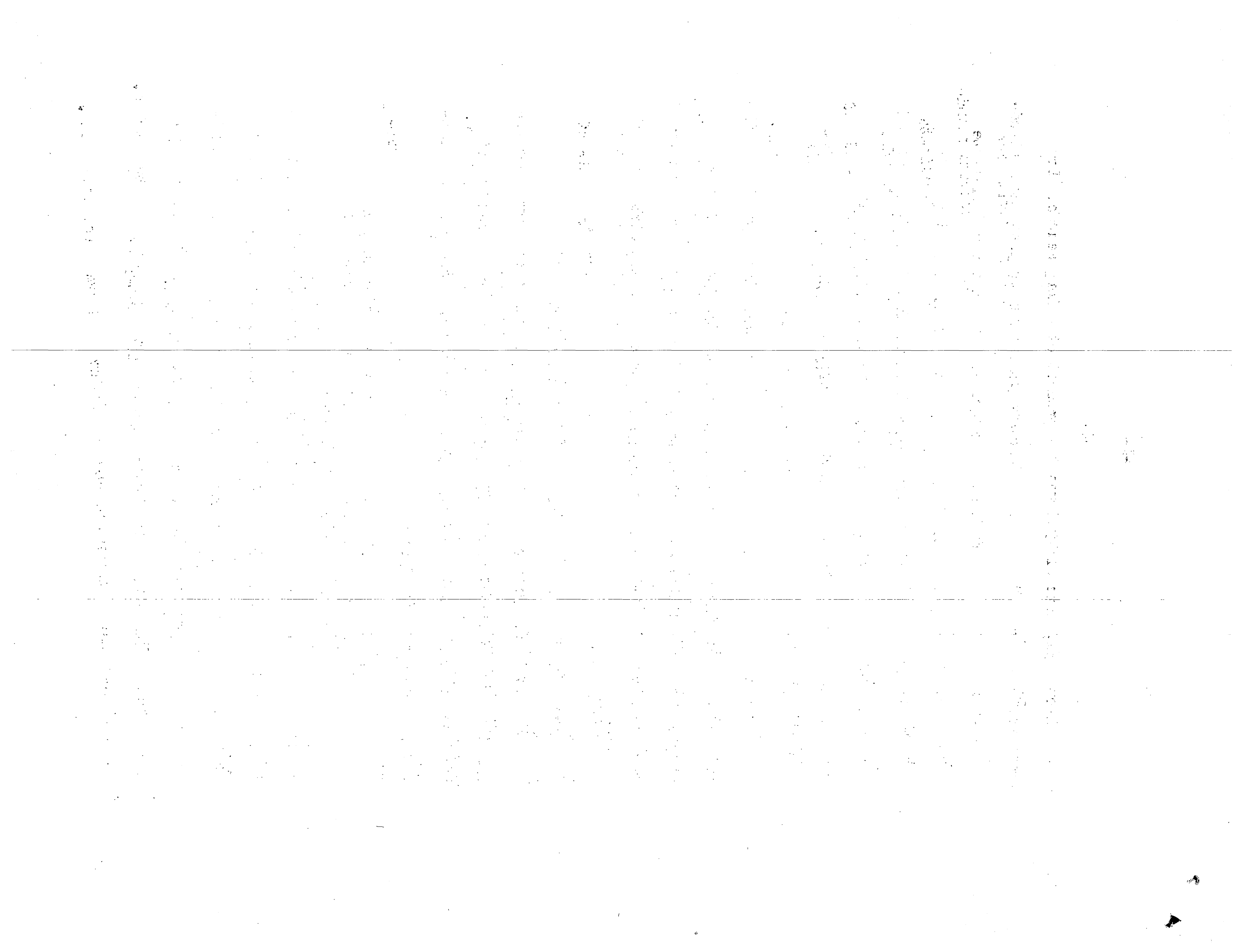
No tax measure can be fully understood or adequately appraised without reference to the environment in which it was developed. Because Chapter 51 was a distillation of so many diverse forces operating over so long a period, it is appropriate to review some of the highlights of its background.

A. The Setting: The Old Constitution and Early Studies

New Jersey's original 1844 Constitution contained no provisions regarding taxation. Not until 1875 was the Constitution amended to establish the so-called uniform "true value" rule for the assessment of property. The amendment read:

> Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. (Art. IV, Sec. 7, Par. 12)

In the decades that followed, the true value doctrine became solidly entranced in the thinking of New Jersey Legislature, who reinforced it by statute. A consistently "liberal" judicial interpretation of the standard persuaded many that the law was being upheld, even when it was quite clear that assessments often represented neither uniformity nor true value.



Appointment of the Commission to Investigate County and Municipal Taxation and Expenditures in 1929 was the beginning of what may be described as the current tax reform movement.

The 1929 Commission: The Commission reported two years later that state equalization of local property assessments was a necessary but neglected part of property tax administration. It harshly criticized the true value standard, condemning it as an excuse for refusing to adjust unequal assessments. The Commission charged:

> ....The principal effect of this constitutional and statutory rule has been that of serving as a basis for certain decisions which have tended to perpetuate rather than eliminate assessment inequalities. The courts have relied on the full value rule in declining to give relief in cases where relative overassessment has been admitted, on the ground that the plaintiff could not establish the assessment of his own property at more than its full value....

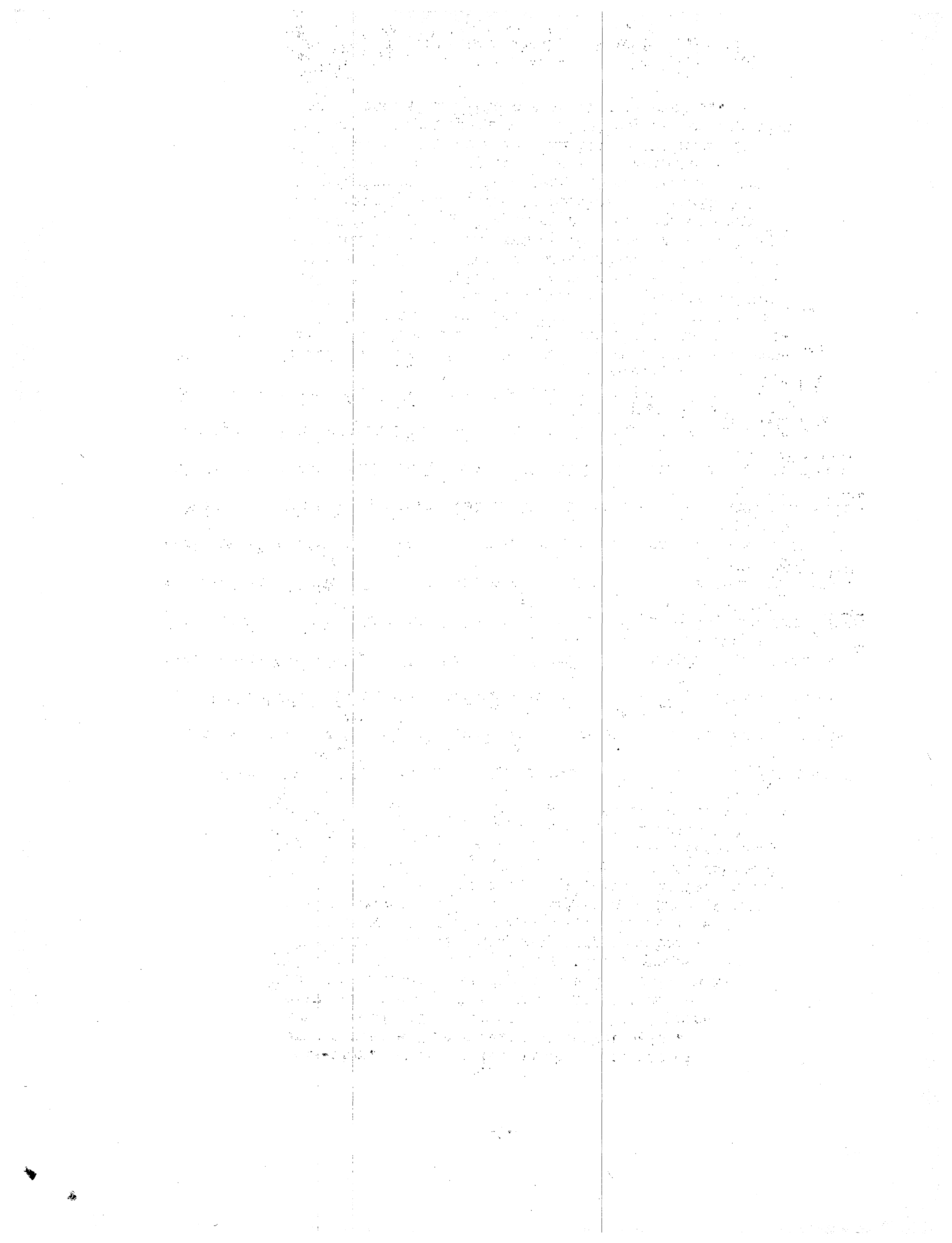
To eliminate the use of the true value standard as a shield for discrimination, the Commission recommended that uniformity, not true value, be made the goal of assessment. Foreshadowing "common level" legislation to be introduced almost thirty years later, the Commission concluded that equal assessments were desirable, but the level at which equalization was accomplished was unimportant:

> ....The most important thing in this connection is uniformity of assessment. It makes no difference in relative tax burdens whether this uniformity be established at 10 per cent or 80 per cent or 100 per cent of the true value, as long as there is a general observance of whatever basis may be determined upon. If it is impossible to interpret the present constitutional rule as an emphasis upon uniformity of assessment basis, then a new rule is needed. After all, "true value" is not something absolutely fixed and definite, like the

> pole-star. Articles for which a free market exists have a fairly definite market value. The increase of the forms and parcels of property for which no free market exists compels greater reliance upon judgment and upon the uniform application of a technique for approximating this value. Since individual judgments vary, there is still greater need for basing the assessment upon a technique which will represent a fairly general community opinion as to basic relative values. The chief emphasis, in both assessment and equalization, should be upon the attainment of uniform assessments, the listing of all properties at approximately the same proportion of their true value....

Besides attacking the true value standard, the Commission considered other aspects of New Jersey's property tax system. It discussed the exclusion of tangible personal property from taxation as general property and decided against it. To those who favored the exemption of personal property on grounds that it could not be assessed properly, the Commission replied that the difficulties lay not in the nature of personal property, but in the attitude of the assessors. The ability of the local assessor to evaluate personal property (other than household belongings) was qualified, argued the Commission, only by his will to gain results. In these words, the Commission placed the burden of overcoming the problems of personal property assessment upon the assessors:

> ....The argument that the assessment of personal property other than personal and household belongings presents insuperable difficulties may be brushed aside. The task is less difficult than is the assessment of real property, provided the assessment agencies are properly qualified for the task and are willing to approach it as a real part of their job rather than as something to be glossed over as unimportant and unnecessary. The requisite morale, or "esprit de corps", for an adequate assessment of personal property must be built up, but the leadership and guidance of the state tax department in its supervision of the new local assessment organization, may be depended upon to accomplish this change of viewpoint....



Nevertheless, if the <u>Commission</u> denied that tangible personal property was unassessable, it did concede that some classes of property (such as tangible personal property) could be taxed differently from real estate:

> ....If property as such is to be taxed, it is extremely difficult to establish a case for taxing some classes while exempting other classes. This does not mean that all classes of property are to be taxed at the same rate or in the same manner. It does mean that there should be recognition of the rule of universality to the extent of providing that all property owned in the state and used for private profit should be taxed, as property, in some degree....

In the case of household personal property, the Commission was sympathetic to the view that the difficulties of assessment were insuperable. In 1931, as now, household personal property was recognized as something which could not properly be taxed as general property. Administrative convenience and economy were given as the reasons for the Commission's recommendation that household personal property be exempted:

> ....There is one concession, in the taxation of personal property, which may be made on grounds of administrative convenience and economy. This is a reasonable exemption of household goods and personal belongings. Such an exemption would apply universally, since every individual and every household possesses equipment and belongings to which the exemption would apply. The privilege should extend to such things as clothing and furniture when used by the owner for personal and non-profit purposes. There is no better reason for exempting the furniture in a furnished apartment than there is for exempting the building or the land on which it stands....

The <u>Commission's 1931 report</u> concluded with an analysis of the needs of the property tax system as a whole. It urged a sweeping reorganization of the assessment process, stressing specifically the need for assessment districts large enough to provide adequate facilities and to command competent assessors. In this respect, the Commission's con-

clusions resembled those reported more than a quarter century later by the Commission on State Tax Policy, which supported county assessment districts:

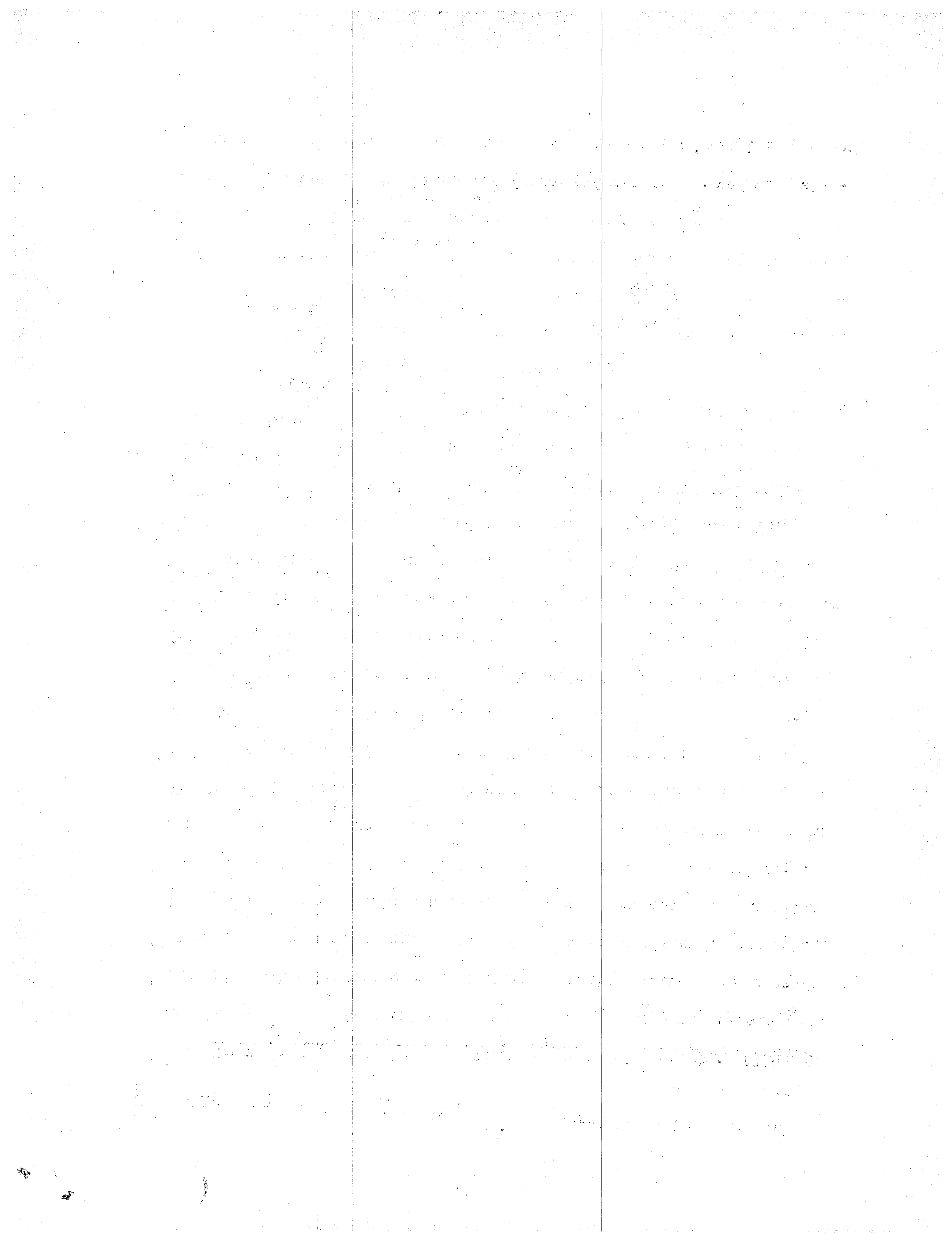
> ....A complete reorganization of the machinery of assessment is imperatively demanded, if the existing defects and difficulties of property taxation are to be cleared away. In fact, without a sweeping change it may safely be predicted that little improvement may be expected in this quarter. In view of the importance of the property tax, now and in the future, as a source of revenue, it is scarcely too much to say that this is the most significant single reform to be introduced.
>
> The general character of this reorganization has already been indicated. The assessment districts should be enlarged, in order to permit the application of a uniform technique and standard of assessment over larger areas. This enlargement of districts will mean that all assessment will be done by more competent and more carefully trained assessors. It will transform the process from a casual, intermittent, often haphazard affair, into a continuous investigation into the facts which underlie the uniform determination of values.
>
> A standard, uniform technique of assessment should be worked out and installed. Some boards of assessors now use many of the features of such a technique, but with larger districts a much closer approach to general uniformity of method would be realized. Since uniformity of assessment is so important for an equitable distribution of the property tax, the significance of this change will be apparent....

The recommendations of the Commission to Investigate County and Municipal Taxation and Expenditures apparently went unnoticed. By 1944, the inequities of the property tax structure once again brought out the investigators. Joint Resolution 4, Laws of 1944, created the Commission on Taxation of Intangible Personal Property, to consider problems associated with erratic assessments of intangible personal property.

Commission on Taxation of Intangible Personal Property: Although legally taxable at true value as part of the general property tax base, intangibles had by custom been assessed at nominal values or not assessed at all. But a few municipalities violated this tradition by assessing large blocks of intangibles held by New Jersey corporations with situs at their statutory office. Called "tax lightning," these unanticipated assessments led to the "colonization" of corporate statutory offices in Flemington (Hunterdon County), where the nominal location of intangible assets made it possible to minimize the tax by combining large taxable valuations and small local budget requirements.

Acting upon recommendations by the Commission, the Legislature in 1945 exempted intangible personal property from taxation (Chapter 163, L. 1945). The same Legislature amended the Corporation Business Tax Act to provide for the taxation of corporations on the basis of their net worth allocable to New Jersey. Here was an example of a property tax problem solved by a "replacement." While they were not taxed on intangible personal property after 1945, corporations did, up to 1958, pay replacement taxes measured by their net worth; since then, they have been taxed on net worth and net income.

But replacement taxes could not solve all New Jersey's property tax problems. The Commission rediscovered the ills of the true value standard. Resurrecting the hitherto ignored words of the old Commission to Investigate County and Municipal Taxation and Expenditures, public hearings held in 1945 by the Intangible Property Commission revealed a widespread and persistent anxiety about the vulnerability of tangible personal



property to unaccustomed levels of assessment under the true value requirement. Local tax officials and business taxpayers alike called for a revision of the assessment process.

Anthony F. Daly, Assessor, New Brunswick, New Jersey

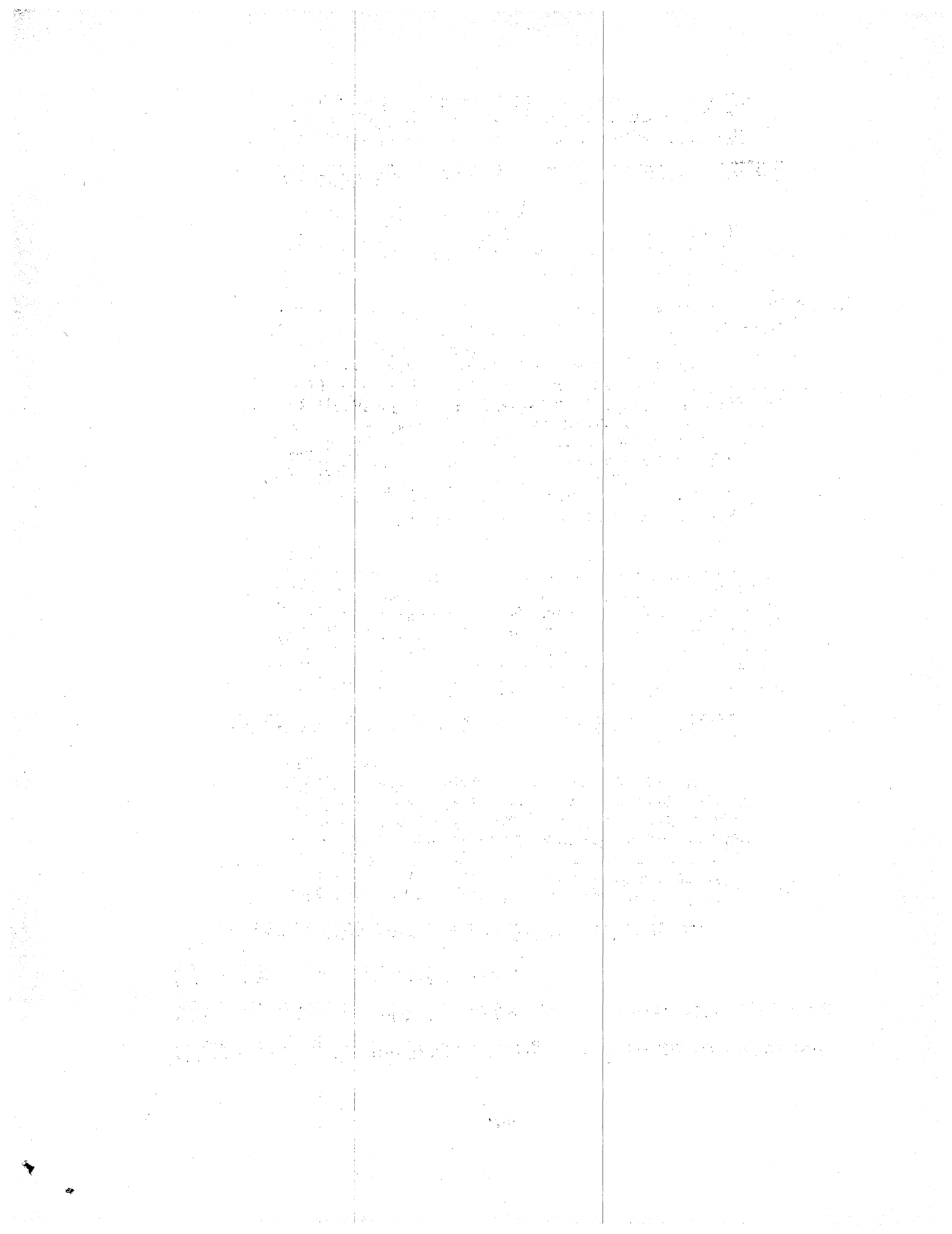
> I feel as tax assessor that the tangible and intangible taxes should be taken out of the hands of the local tax assessors and placed with the State Tax Commissioner. As several of you gentlemen have stated here, they are discriminatory because while we have a State law, each municipality has its own law, so there are being administered 531 different laws.

Leo Rosenblum, President, Hudson County Board of Taxation

> The taxation of all tangibles at the full local rate is impractical and works a hardship on the taxpayer. Particularly is this true in the taxation of inventories, as distinguished from machinery and equipment, whether comprised of raw materials, goods in process or finished goods. To tax these inventories at anywhere from five to six per cent of their full value is manifestly unfair.
>
> As a practical matter, most assessors ignore the law and assess such personal property on some arbitrary basis, usually far below the true value. An analysis throughout the State of the varying taxes paid upon inventories would produce a story of complete confusion. The merchant or manufacturer is at the mercy of the assessor. He is taxed too little or too much, seldom uniformly. My experience is that local assessors treat the problem of tangible personal property on a purely hit-and-miss basis. They are neither equipped nor prepared for the problem, and the uniformity demanded by the Constitution and statutes is shockingly disregarded.
>
> Tangible personal property cannot be assessed properly unless it is administered by a specialized and efficient assessing department. Local assessors cannot do the job and they should be relieved.

J. H. Thayer Martin, representing the Newark Chamber of Commerce

> The Newark Chamber believes that the proper solution of eliminating the present method of taxing personalty lies in some state-administered tax which will treat



> all property of like class throughout the State on the same or exactly the same basis -- all property, that is, that is devoted to business use.

Russell E. Watson, Counsel, N. J. State Chamber of Commerce

> It is the part of wisdom to treat taxation of intangibles as a separate subject by itself. Solve it in some equitable way in accordance with the best interest of the State of New Jersey. Then undertake the solution of the problem of tangibles. Solve that in the same way, and move to the subject of a replacement tax, also as a separate individual subject.

The Commission on State Tax Policy: The Commission on Taxation of Intangible personal property recommended that the Legislature place tax study on a continuing basis by creating a permanent Commission on State Tax Policy. The 1945 Legislature created such a Commission on State Tax Policy (Chapter 157, Laws of 1945) and charged the following:

> Engage in continuous study of the State and local tax structure and related fiscal problems, with particular attention to (a) all laws relating to the assessment and collection of taxes in this State; (b) all proposals for change in such laws; and (c) the impact of Federal tax laws of the State financial structure.
>
> Determine the respects in which the existing tax laws may be simplified, modified, rearranged, consolidated and revised to insure greater efficiency in the assessment and collection of all taxes.

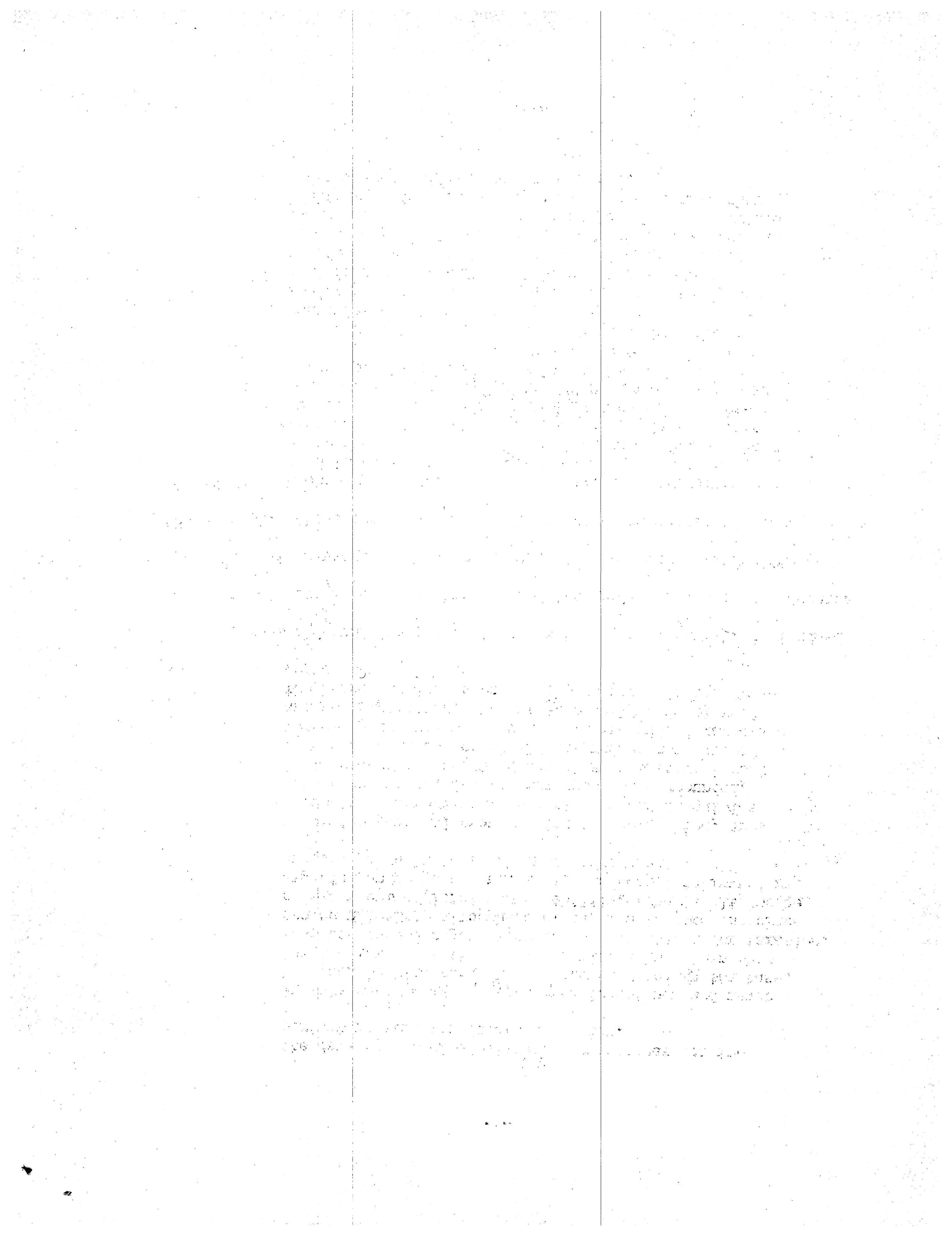
The State Tax Policy Commission's first report, issued in 1946, marked a bridge in thehistory of New Jersey's journey toward a revised property tax structure. The Report restated the longstanding objections to the discriminatory true value system:

> The Commission has deemed the subject of local property tax administration one of its major responsibilities. In this field, it has already been noted that the taxation of tangible personal property, the improvement of real estate tax administration and

> the development of equalization procedures are important matters for future attention.
>
> In this sense, personal property is not now and never has been truly a part of the general property tax base. But the letter of the law which places it within that base has caused negotiation to be substituted for taxation, and an unhealthy atmosphere of caprice to take the place of clear cut official responsibility. The result, to be expected under such conditions, has been discriminatory, unequal and sometimes arbitrary assessments.
>
> Under the personal property tax as now applied, cross currents of favoritism, inequalities and inequities are so extensive, and in many cases so compounded, that the establishment of equality of treatment must be expected in and of itself to produce some marked tax readjustments with respect to individual taxpayers and municipalities. But it is equally evident that the longer action is postponed the more difficult readjustment will become.

To that old indictment the State Tax Policy Commission report added a series of recommendations which formed the basis for tax reform debates for the next 14 years, and, indeed, many of which were included in Chapter 51. These are some of the 1946 report's recommendations:

> Machinery, tools, equipment, furniture and fixtures used in business be state-assessed at true value, which shall be presumed to be book value but not less than 20 per cent of cost so long as an item remains in use; and that such property be assessed at one-half the local general property tax rate, but not in excess of the previous year's average state rate.
>
> The present property tax as applied to business inventories of raw materials, work in process, semi-finished goods and stock in trade be abolished, and that in lieu thereof there be adopted a "general business excise tax" at the rate of 2/10 of 1 per cent upon the value of goods produced in New Jersey, in the case of manufacturers, and on the gross volume of business in this state, in the case of all other enterprise (with certain exceptions).



> The taxation of household goods as property be completely abandoned, and that the municipalities be given the power to impose as a matter of local home rule an occupancy tax which would apply in such manner as the local governing body may determine.
>
> The taxation of farm personalty remain as at present to be administered under the general property tax.
>
> The entire amount be returned to the respective municipalities in which the property or business giving rise to the tax is located, except for 5 per cent of the total shall be retained by the State to pay the cost of administration.

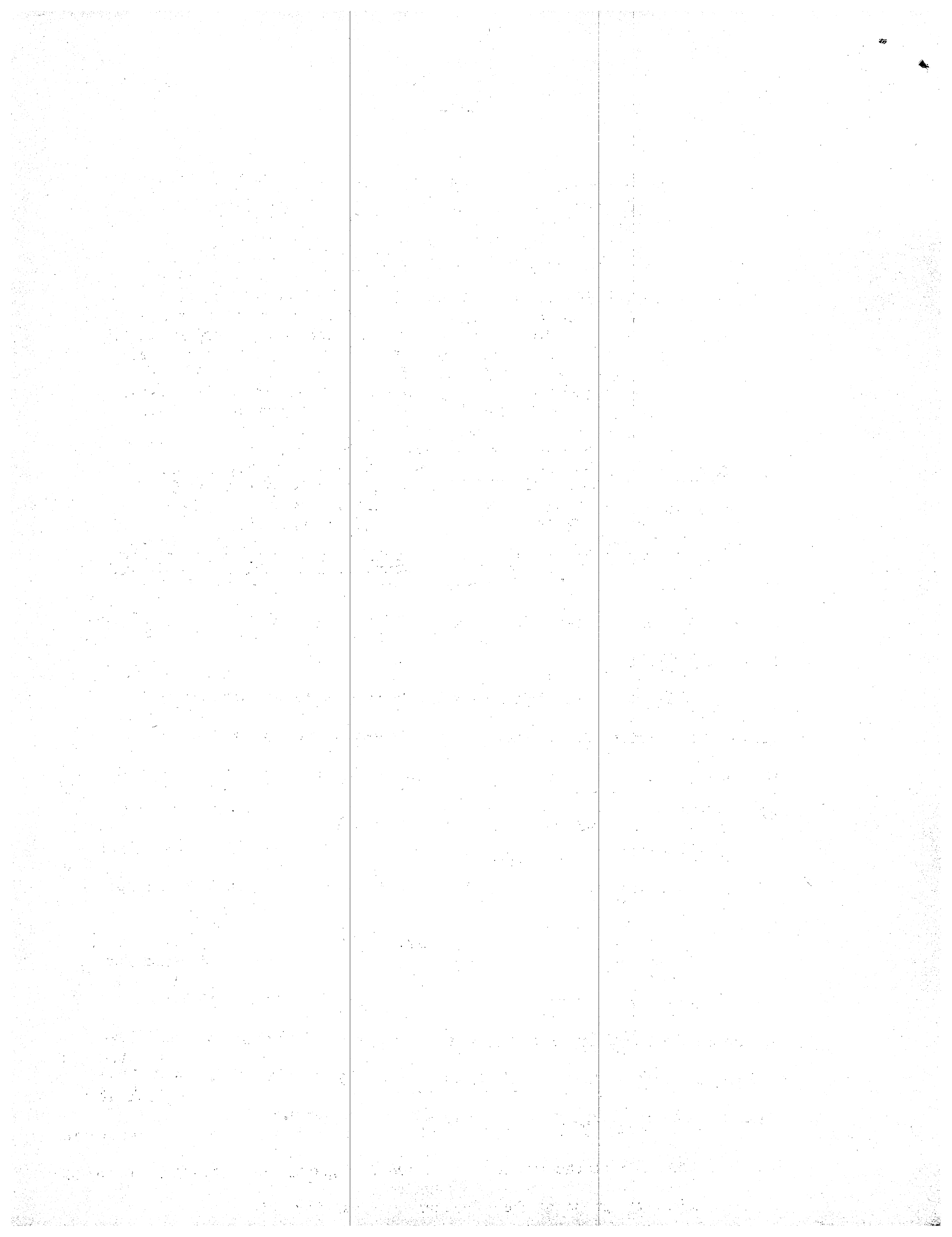
B. Making Reform Possible: The Constitutional Convention of 1947

As is so often the case with important events, one cannot really understand the significance of the actions of the Constitutional Convention of 1947 without first becoming familiar with the circumstances surrounding them. The tax environment of 1947 can be described in the following terms:

1) The true value requirement had become a bar to judicial relief from discriminatory assessments, in which some taxpayers were assessed more than others but still not in excess of the constitutional standard of true value.

2) Tax reform was in the air, and there was a widespread conviction that more flexible tax policies should be adopted at the State and local levels.

3) Class II Railroad Property (assessed by the State and taxed for the benefit of local taxing districts) had been taxed since 1941 at a uniform rate (3%), lower than general tax rates applicable in local districts where large amounts of railroad property were located. Those districts were pressing for a return to local tax rates.

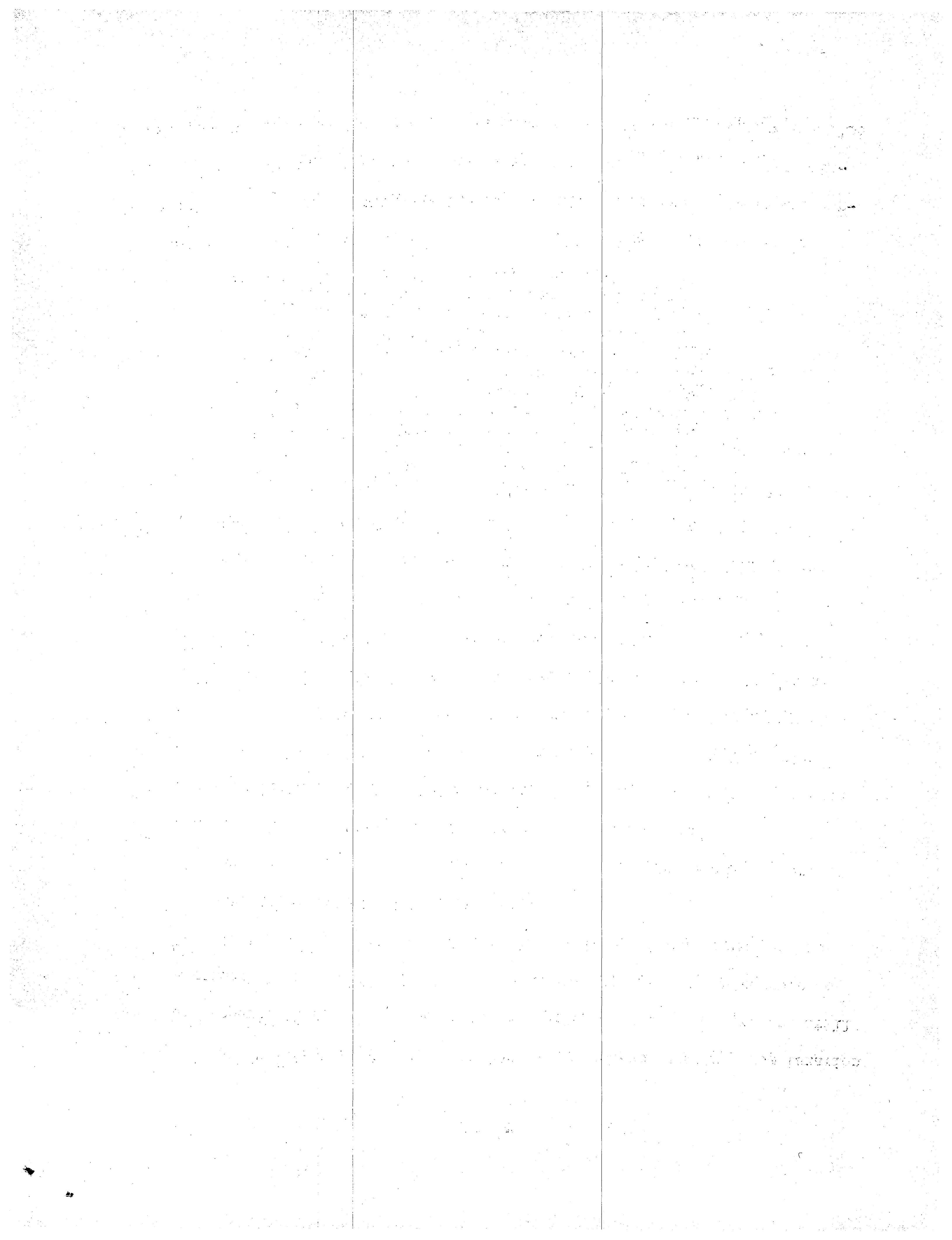


4) Intangible personal property had just been exempted from taxation as property (1945) to protect it from tax lightning. But there was still a general belief that tangible personal property was also vulnerable to tax lightning, and that the State could not long postpone some measure of protection against this contingency.

As the Convention met, there was undeniably a substantial amount of pressure to remove Constitutional restrictions on the power of the Legislature to deal with tax problems. Yet, there were many who opposed such a change; they argued it was unnecessary. To their satisfaction, a loose judicial interpretation of the existing Constitutional provision had already insured enough flexibility of legislative action. A mass of testimony before the Committee on Taxation and Finance clearly delineated the extent of the disagreement over the limitations imposed by the existing Constitution. The Legislature's right to classify property was defended by Aaron K. Neeld, of the State Division of Taxation:

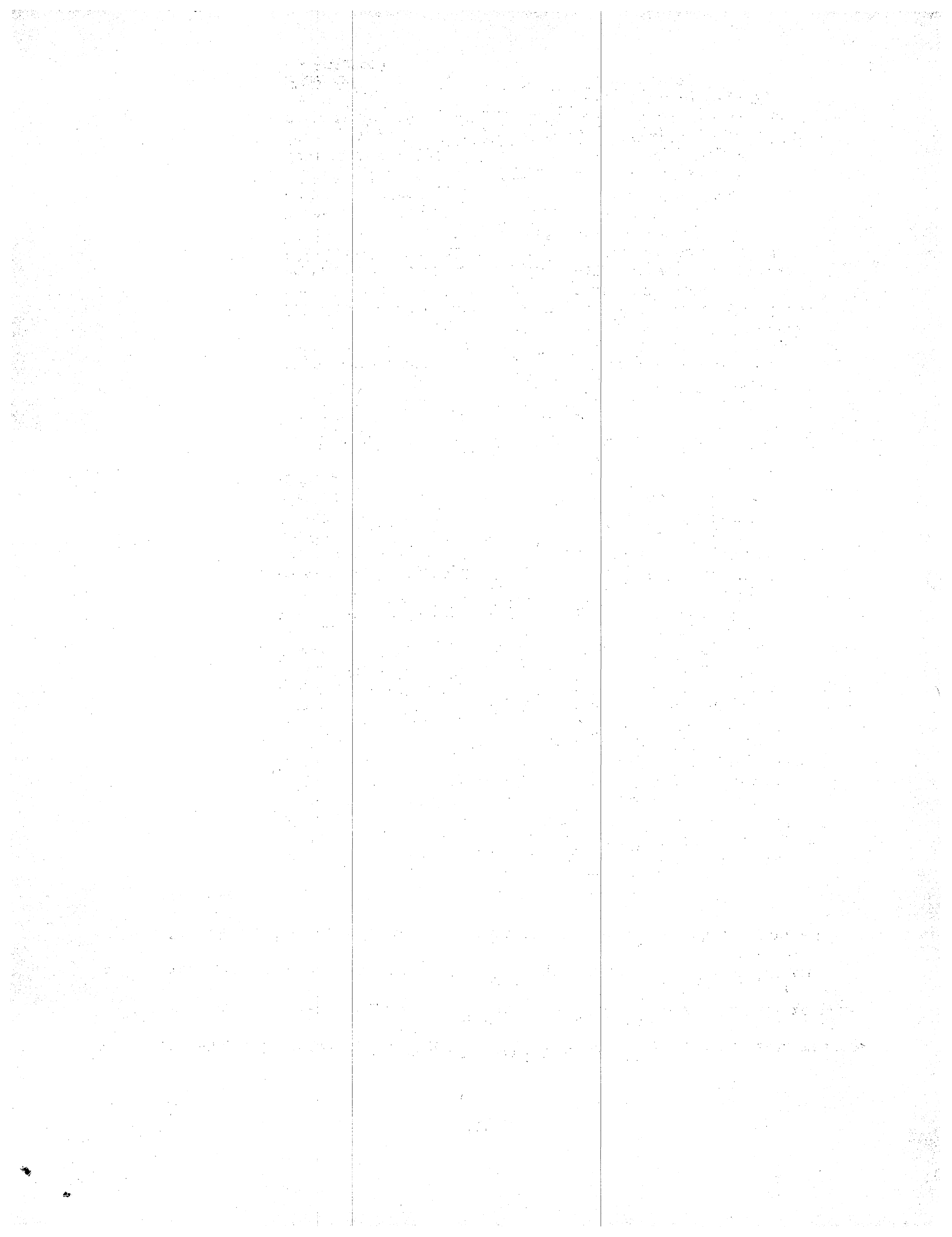
> The statutes of this State are replete with classified tax laws. The Legislature has always presumed the presence of the power to classify property for the purpose of more equitably distributing the tax burden. In addition to property taxed locally under general laws, by uniform rules and at true value, the Legislature has created many classifications of property, according to use, for separate consideration. And then there are several indirect tax statutes, not deemed to be of a property-tax character, which levy excise taxes on the transfer or sale of property. (Convention Proceedings, Vol. II, p. 1689)

The New Jersey Association of County Tax Board Commissioners and Secretaries recommended continuing the existing clause to avoid the confusion of change, interpretation and adjustment which any new constitutional language would bring. Permissive property classification was also



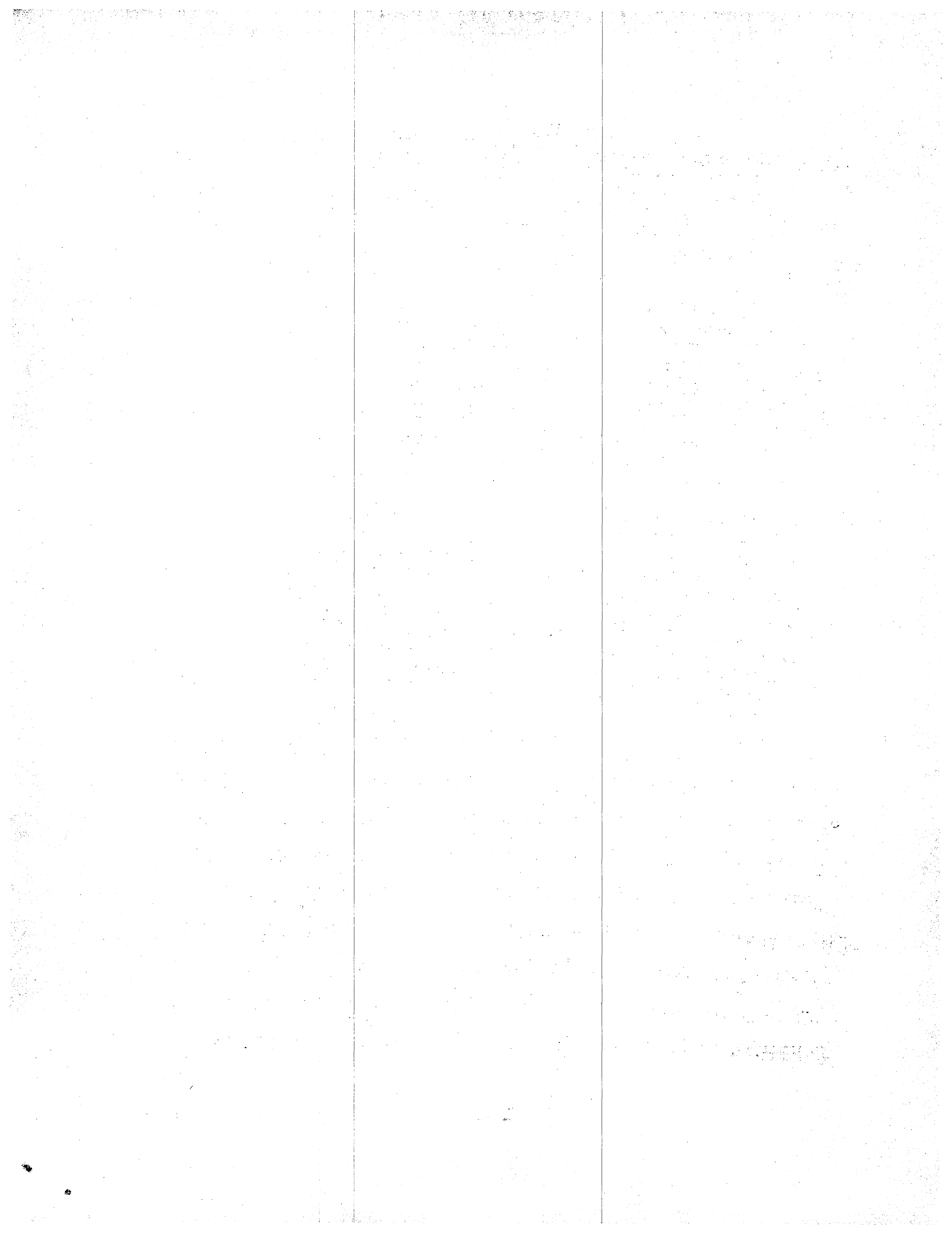
discouraged by the County Tax Board Commissioners for much the same reason. Here was a frank defense of the status quo by the county officials responsible for local tax administration. It was stated to the Committee on Taxation and Finance by the Association President, Herbert H. Eber, as follows:

> In seeking out an acceptable standard of value for inclusion in the tax clause, we were particularly impressed with the "true value" provision as contained in the present Constitution by force of the 1875 amendment. A new constitutional standard of value for purposes of taxation, however phrased, will necessarily require numerous judicial constructions, over a period of many years, before its meaning can be adequately defined. We prefer the standard of "true value" principally because of the numerous illuminating opinions which have already been handed down by our highest courts in that connection. Today in New Jersey the meaning of "true value" is reasonably fixed and certain. We should therefore take advantage of the results obtained through the painstaking and tedious litigation of previous years, by retaining "true value" as our standard value for taxation purposes, and thereby make it unnecessary to embark at the beginning of a wearisome journey through a maze of litigation in search of judicial interpretations of whatever new standard might otherwise be fixed.
>
> We also gave considerable thought to the possible inclusion in the tax clause of a provision specifically granting legislative authority to classify property for assessing purposes. Although we looked favorably upon certain features of the tax provisions as contained in the Delaware and Pennsylvania Constitutions, whereby specific authority is granted to the Legislature for assessment classification, we concluded nevertheless that it would be in the exercise of better judgment to refrain from such an express grant to the Legislature. Our decision in this regard was motivated principally by the greater number of decisions in this State, the over-all effect of which has been to place the stamp judicial approval upon reasonable classification of property for assessing purposes. As a result, we feel that our judicial interpretations are an authority for all reasonable property classifications, and that a specific legislative authority in the New Constitution might readily extend the classifying power beyond such reasonable limits. (Convention Proceedings, Vol. V, p. 856-857)



J. H. Thayer Martin, former State Tax Commissioner and Chairman of the 1929 Commission, took a somewhat different approach to defend retaining the old constitutional tax clause. He regarded the tax clause as adequate to permit legislative adjustment to changing conditions without the necessity for prolonged litigation to determine "what any new language meant or what the court will say it means." Mr. Martin's testimony before the Committee on Taxation and Finance implied no obstacle to fractional assessments, but did not mention property classification as a possible legislative adjustment:

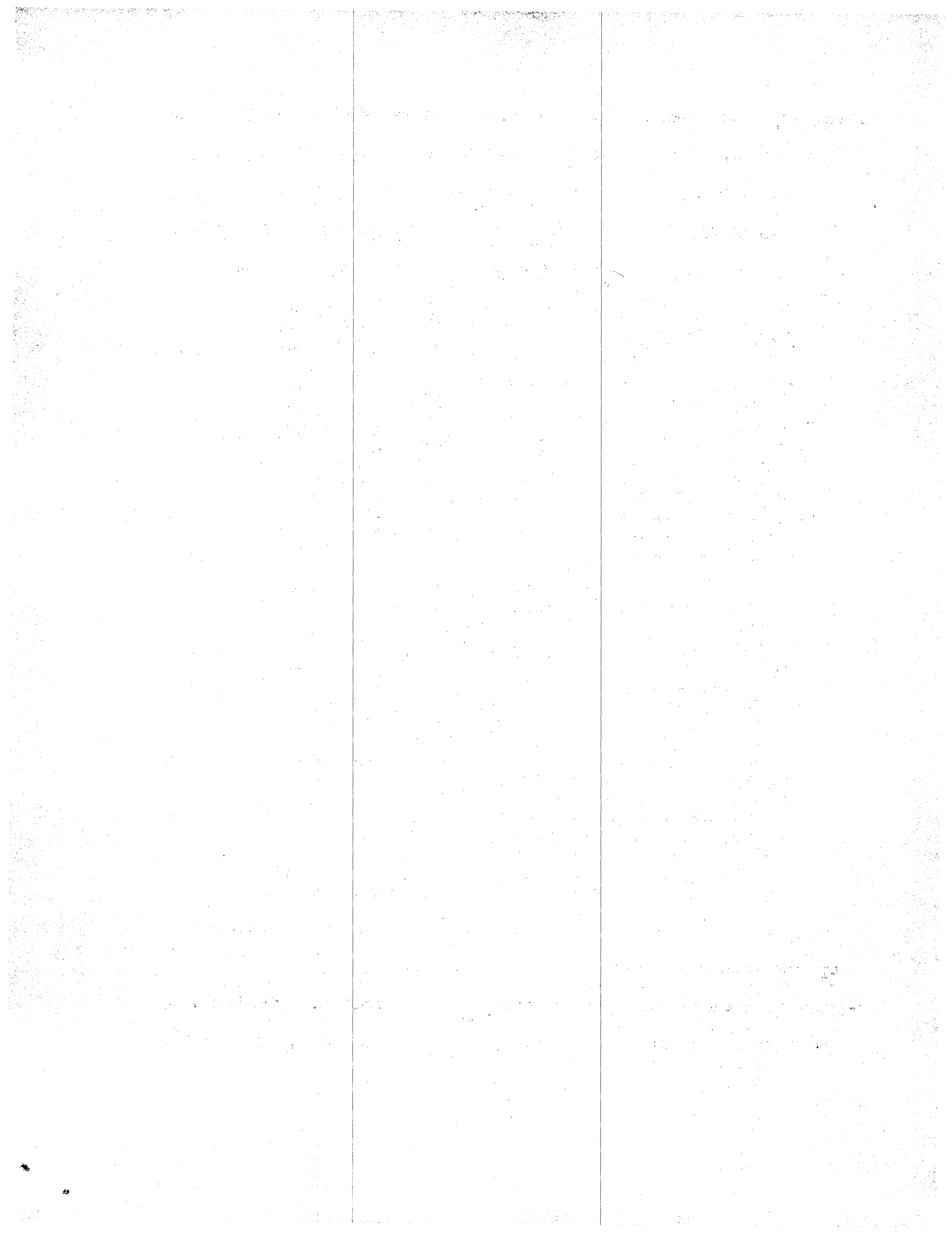
> I personally am very strongly of the opinion that you can't improve on the language of the present Constitution with respect to taxation. I was very much opposed to the proposal that was last submitted for the so-called basis of valuation. I forget the language of the proposal. There are only a very few states that have such a provision, and while I was Tax Commissioner I made a considerable study of the conditions of those states and I found that the result was even worse than in New Jersey -- and everyone knows there has never been any uniformity in New Jersey.
>
> In principle, I don't think the language in our present Constitution can be improved. Some of the people who urged the change that was proposed last time felt or said it was essential to have such a change -- not to authorize assessment of 10 or 50 or 70 per cent of true value, but to establish standards, as the Legislature did in the case of the utilities tax. But the decision of the Court of Errors and Appeals has shown plainly enough that under our present Constitution no change is necessary to make that a permissible method.
>
> My observation not only in respect to New Jersey taxes but in the study of the practical operation of tax laws in other states, and in conferences with the heads of tax departments of other states, has convinced me that the Legislature should be left very largely free to change the tax system from time to time, as conditions at that time seem to warrant and justify such change. (Convention Proceedings, Vol. V, p. 611)



To clarify legislative authority to classify property without subterfuge, Mr. Neeld recommended a constitutional change that would specifically grant the Legislature power to classify property for taxation. In a memorandum dated July 16, 1947, he wrote:

> While the courts of this State, from the beginning, have adopted a liberal interpretation of the 1875 tax clause by upholding, with a few exceptions, the power of the Legislature to classify property for purposes of taxation and exemption, nevertheless it seems advisable to specifically provide for classification. This conclusion is prompted by the possibility that the present clause, notwithstanding general judicial support for the power to classify, may be found wanting in the event of an endeavor to solve the tangible and intangible property tax tangles and other tax difficulties. Both the Commission on Taxation of Intangible Personal Property (1945) and the Commission on State Tax Policy (1946) held the view that a thorough classification statute might be held invalid. A classification clause would also bring the Tax Article more nearly in conformity with such articles in other modern state constitutions.
>
> This, of course, will not, as some of its proponents suggest automatically shift the heavy burden of taxation from real property. That is something which cannot be attained merely by constitutional edict. But insertion of a classification clause will provide the Legislature with needed tools to deal fully with the problem of more equitably distributing the tax burden. It will permit a broadening of the tax base over which to more evenly distribute the tax load. Although a judicially and time tested constitutional provision should be abandoned reluctantly, I, nevertheless, believe that the people of the State cannot be harmed by so doing, but to the contrary will be better served over the years to come by such a change. (Convention Proceedings, Vol. V, p. 853)

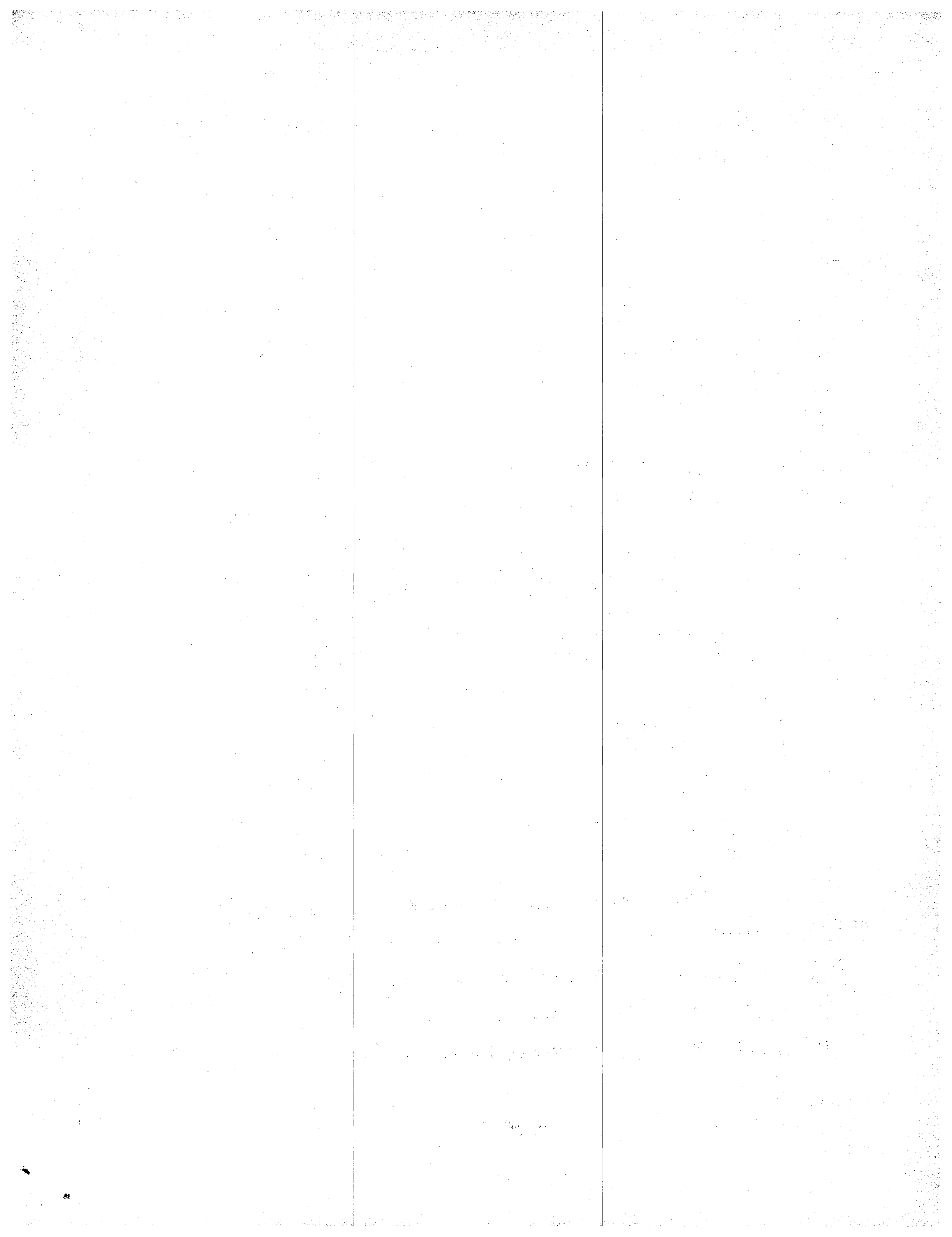
Leaving no doubt about the authority of the Legislature to classify property and to select any suitable standard of value, John F. O'Brien, speaking for the New Jersey Committee on Constitution Revision (composed of the New Jersey State Federation of Labor, New Jersey State Federation of Women's Clubs, New Jersey Association of Real Estate Boards, New Jersey



Taxpayers' Association, National Council of Jewish Women, Consumers' League of New Jersey, American Association of University Women, New Jersey State Federation of Colored Women's Clubs, New Jersey League of Women Voters, Congress of Industrial Organizations and New Jersey League of Women Shoppers) recommended the following tax clause:

> Property shall be assessed for taxes under general laws, and by uniform rules, according to classifications and standards of value to be established by law.
>
> In creating such classifications, and establishing the standards of value for each, the Legislature will give due consideration to the type of property, its earning capacity, the public services it receives and its relationship to the welfare and stability of the State and its subdivisions.
>
> Assessments where made on an ad valorem basis shall not exceed the true value of the property assessed.
>
> Exemptions from taxation may be granted only by the affirmative vote of two-thirds of the membership of each house of the Legislature. (Convention Proceedings, Vol. V, p. 544)

Apart from the controversy over the adequacy of the old Constitution with regard to classification of property, there was a related debate concerning classification as it applied specifically to railroad property. Railroad property had, in effect, been classified by legislative act, and this classification had been upheld by the courts. The problem had been created by a 1941 statute taxing all railroad property at 3% of taxable value and imposing a franchise tax determined by railway earnings. Municipalities received the proceeds of the 3% tax on Class II railroad property, plus half of the franchise tax. As the prosperous war years passed, however, municipalities received less railroad tax revenue than would have been collected were all Class II railroad prop-



erty subject to local property tax rates, as it had been before 1941.

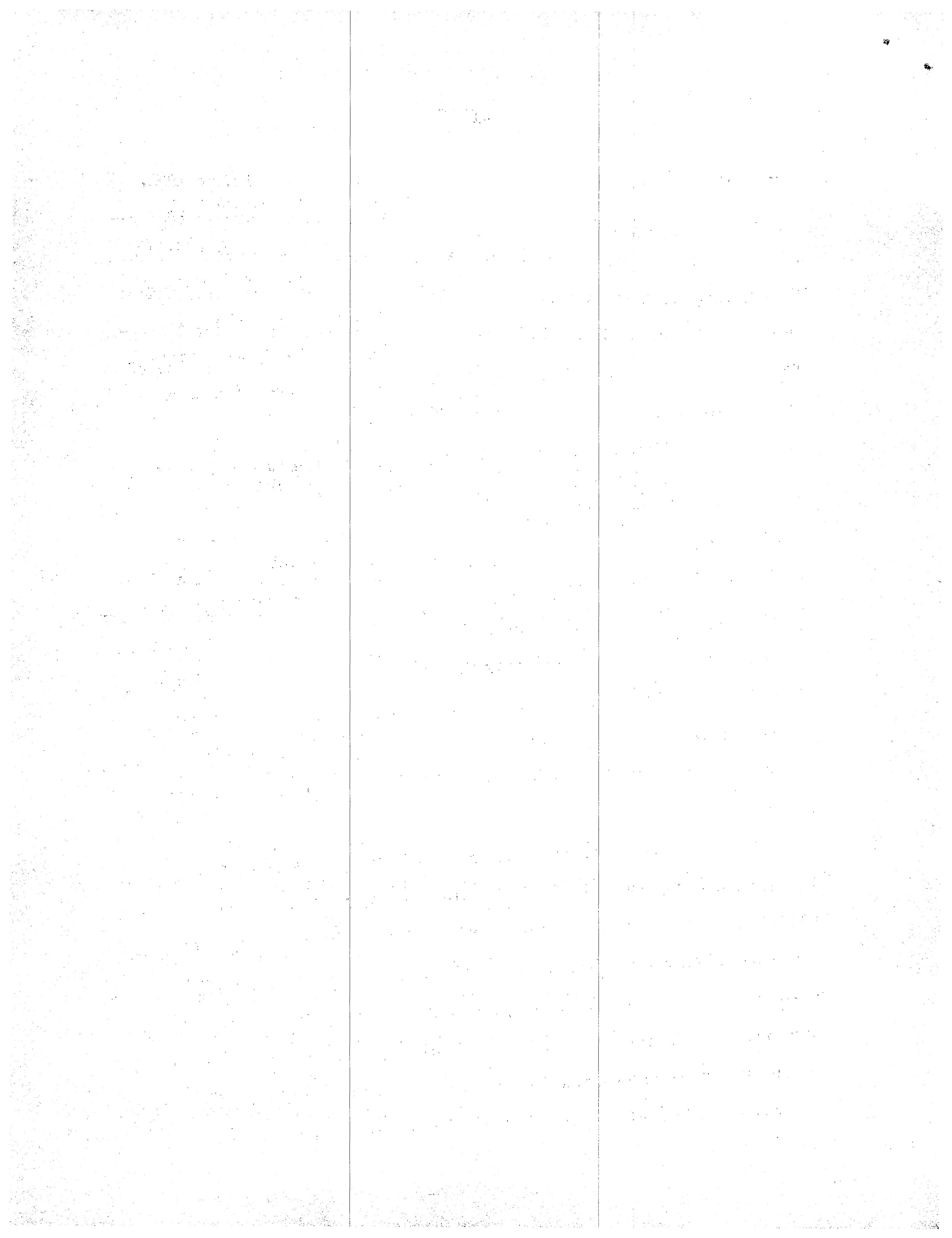
Rather than give the Legislature any new constitutional freedom regarding tax standards and classification of real estate, municipalities with large amounts of railroad property hoped to establish restrictions that would return Class II railroad property to taxation at local property tax rates. With this goal in mind the New Jersey State League of Municipalities suggested the following tax clause:

> Property shall be assessed for taxation under general laws and by uniform rules, according to its true value. The burden of taxation upon all real property not exempted shall be equal.

It is notable that the main difference between the tax clause suggested by the League of Municipalities and those providing for classification was related to real estate. Evidently, everyone wanted to relax Constitutional restrictions on personal property. Classification clauses did it directly; the League did it by exempting personal property from the requirement that the tax burden be equal. The disagreement was whether to classify real property, or to subject it all to an equal tax burden.

There was, however, another difference between the two approaches from the standpoint of restricting legislative action. While classification clauses let the Legislature establish "standards of value," the League plan maintained the true value standard. Thus, although it had agreed to permit legislative latitude in personal property taxation, the League severely limited that freedom by retaining the true value clause.

The Committee on Taxation and Finance recommended (July 30, 1947) that the Convention retain the old true value clause unaltered. Then



followed a series of proposed amendments to the recommendation (called Proposal No. 5-1). These were some of the more significant amendments:

Amendment No. 1 - Allan R. Cullimore

> Property shall be assessed for taxes under general laws and by uniform rules.

Amendment No. 5 - Frank H. Eggers

> Property shall be assessed for taxes under general laws and by uniform rules, according to its true value. Real property now defined by law as Class II railroad and canal property shall be assessed for taxes as hereinabove provided and shall be taxed at the local rate of each municipality wherein such property is located, and the proceeds thereof shall be paid to each such municipality.

Amendment No. 6 - John Milton

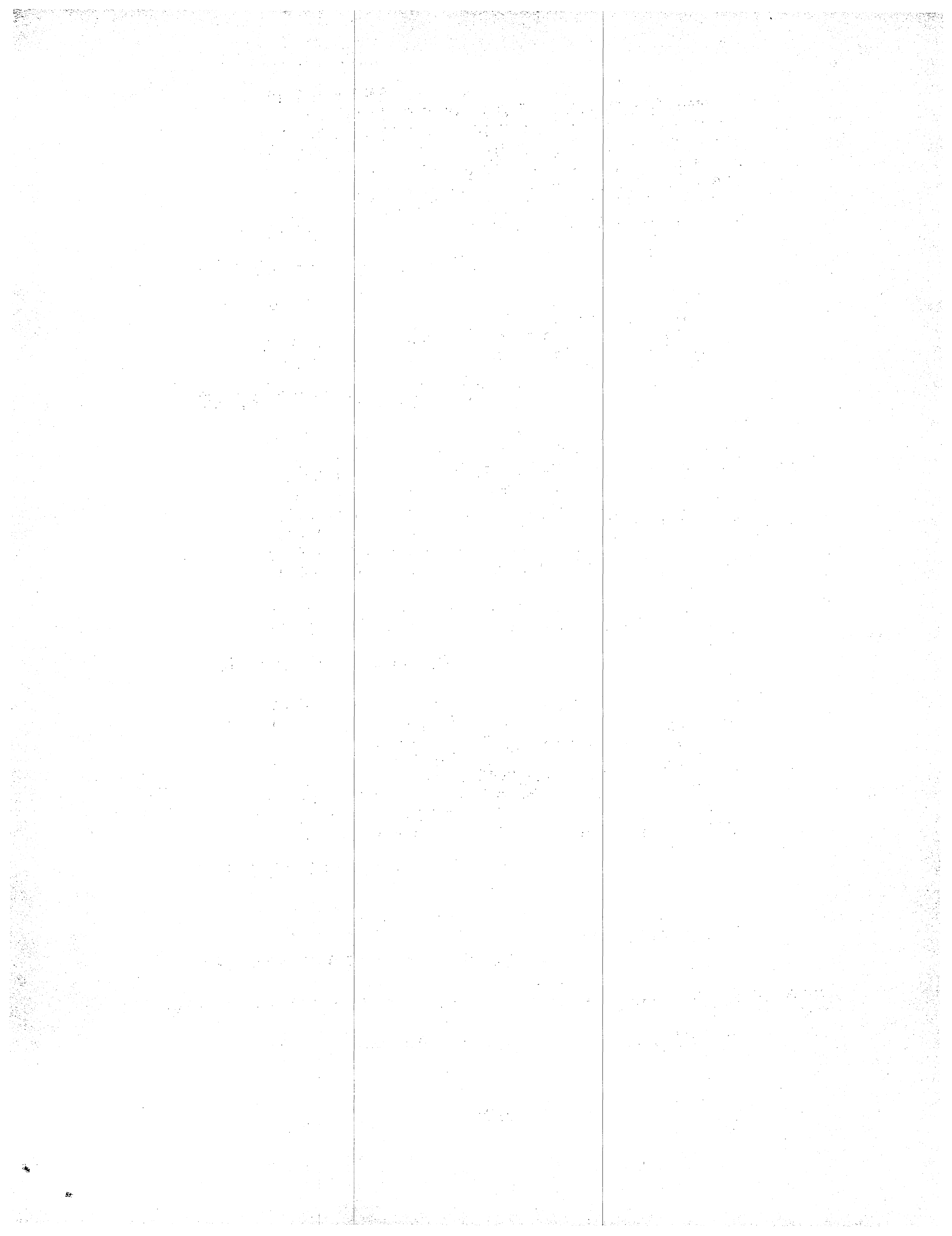
> Offered as an alternative choice to be made by the voters on referendum.
>
> Property shall be assessed for taxes under general laws and by uniform rules, according to its true value. Real property now defined by law as Class II railroad and canal property shall be assessed for taxes as hereinabove provided and shall be taxed at the local tax rate of each municipality wherein such property is located, and the proceeds thereof shall be paid to each such municipality.

Amendment No. 7 - Arthur W. Lewis

> Property shall be assessed for taxes under general laws, and by uniform rules, according to classifications and standards of value to be established by law.

Amendment No. 9 - Robert Carey

> Property shall be assessed for taxation under general laws, and by uniform rules, according to its true value. Value shall be determined and fixed by rules and regulations adopted by the Legislature, and such rules and regulations shall be applied equitably by all tax assessing authorities in the State so as to provide equal, similar, and fair taxation throughout the State.



Amendment No. 10 - Milton Feller

> Taxes shall be assessed under general laws and by uniform rules. All real property taxable for local purposes shall be assessed and taxed at uniform rates within each taxing district.

Amendment No. 11 - Allan R. Cullimore

> Property shall be assessed for taxation under general laws.

Amendment No. 12 - Milton C. Lightner

> Property shall be assessed for taxation under general laws, and by general rules. Classification and standards of value for the assessment of property for taxes may be established by general laws. No assessment shall exceed the true value of the property assessed.

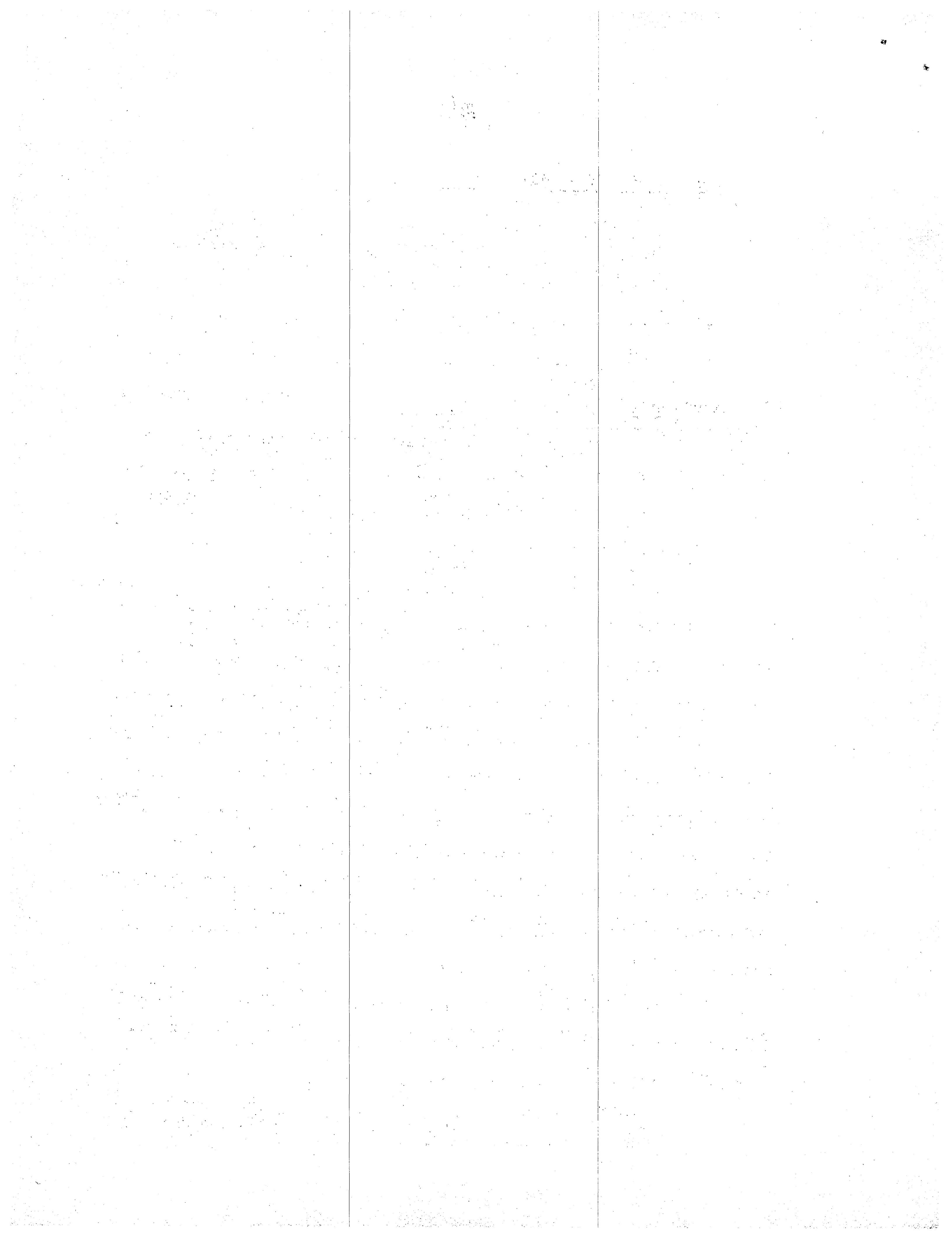
Amendment No. 16 - William T. Read

> Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value and taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district. (Convention Proceedings, Vol. 11, p. 1241-1246)

These proposed amendments illustrate the sharp disagreement about restricting classification and the influence of the railroad tax question. Perhaps more than any other single factor, it was the railroad tax situation that helped bring about the adoption of a tax clause prohibiting classification of real estate, but permitting classification of personal property.

The provision adopted by the Convention became the basic legal requirement concerning local property tax administration in New Jersey. It reads as follows:

> Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed

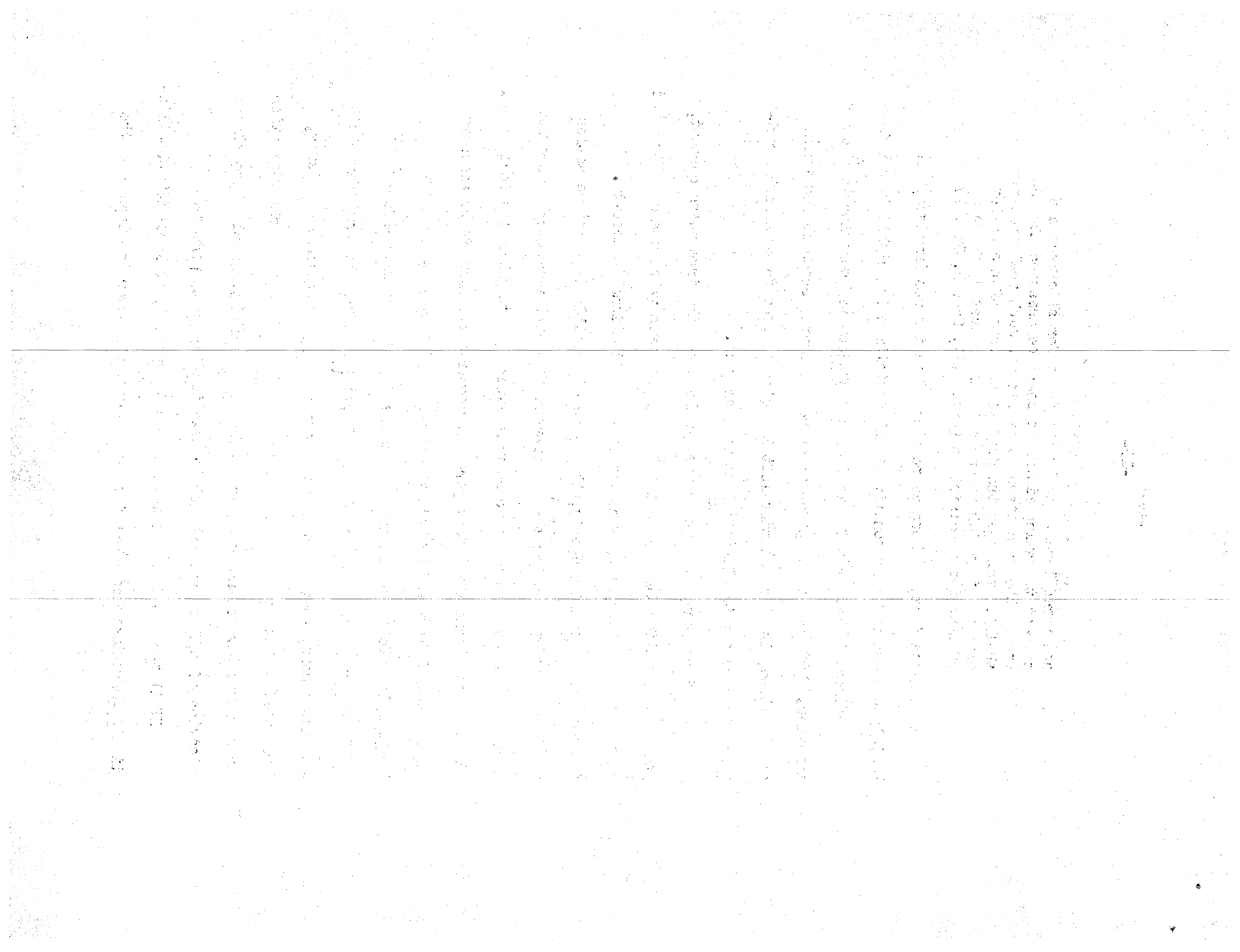


> and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard value; and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for use of such taxing districts (Art. XIII, Sec. 1, Par. 2)

This means that, so long as no classification was involved, the Legislature was under no constitutional inhibition in establishing uniform assessment standards for real estate subject to local assessment and taxation. With regard to personal or real property assessed and taxed by the State, the Constitution left legislators free to establish a uniform standard and to classify property, as well.

Most important, the new provision abandoned the true value concept, emphasizing uniformity instead. Although the true value standard remained in force by statute, it was no longer a constitutional necessity. In the case of personal property, the range of possible legislative action was broadened by removing the requirement that such property be assessed according to the same standard as real estate and taxed at the local rate. The only requirement was that personal property continue to be assessed under general laws and by uniform rules. In the case of real estate, legislative choice was restricted to assessment standards which apply uniformly and bear taxes at the same local tax rate. Although farmers and homeowners, restive about their steadily rising real estate taxes, had hoped to become beneficiaries of some form of property classification or property tax replacement, the door was apparently closed to any classification of real estate subject to taxation for local purposes.

If it had not done all that some had expected, at least the Constitutional Convention had given the Legislature the power to dispose of the



true value standard and to correct some of the ills developed under the old system. Clearly, the Convention had shown that it did not want to obstruct legislative repair of what the Commission on State Tax Policy had termed "an indifferently administered and inequitable tax system." (Second Report, 1947, p. 3)

C. Outlining a Reform Program: The Commission on State Tax Policy

Now that direct legislative action upon personal property classification was possible, it remained to induce the legislature to act. The Commission on State Tax Policy began to develop studies and recommendations concerning property tax change. From its annual reports came not only the impetus for legislative action, but the substance of much of it as well.

The Commission's Fifth Report, issued in 1950, stressed the importance of equalized assessments:

> If local assessment is to continue, the machinery for the establishment of equalized assessments as among taxing districts, both for the fair apportionment of the county tax and for the fair distribution of State aid based upon ratables, is of first importance. This, also, is a matter of much law and little practice.

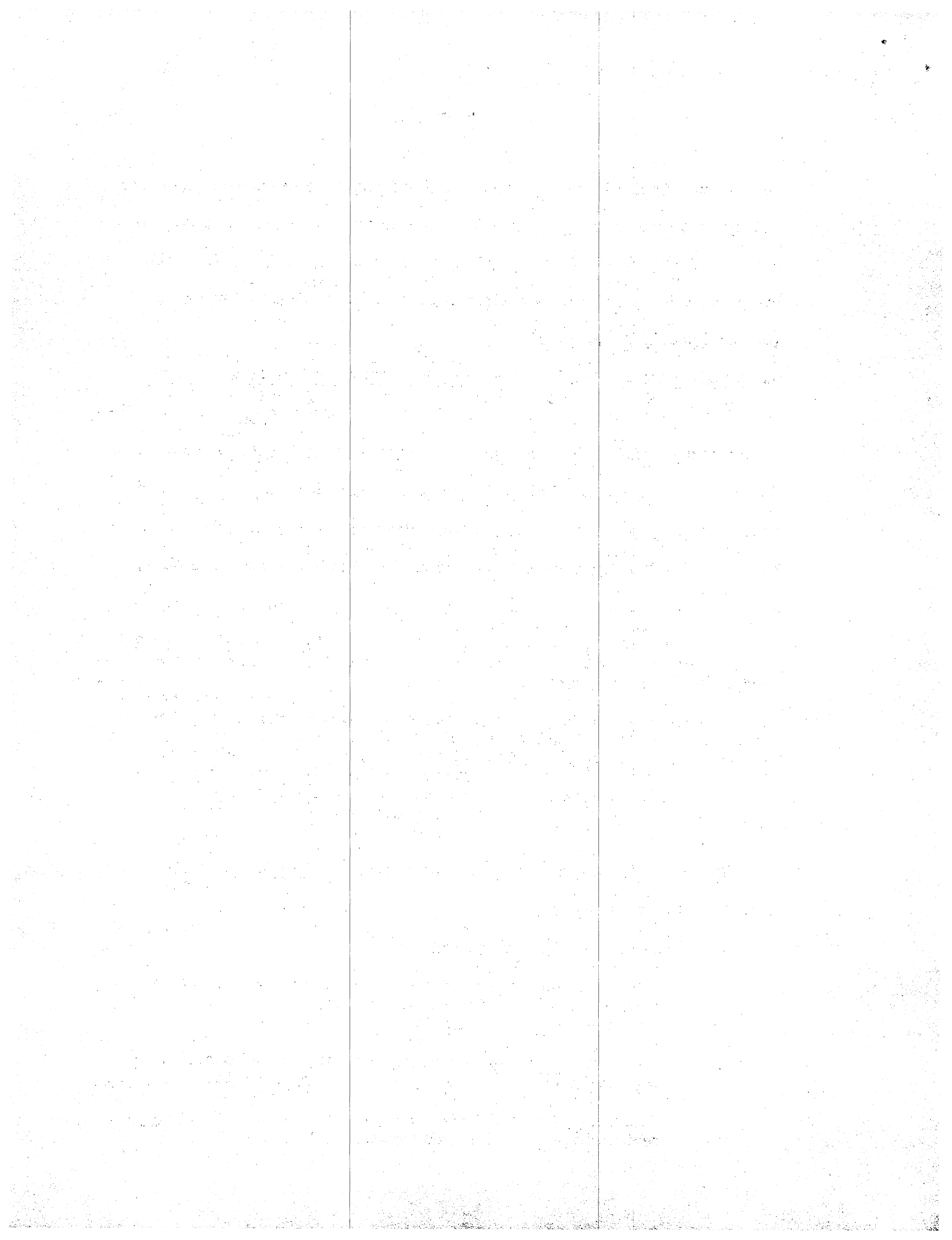
In regard to business personal property, the Commission outlined five possible approaches:

1. To enforce the law as written.

   Enforcing the law as written would require at the outset a complete overhauling of the present machinery for assessment and equalization.

2. To abolish *ad valorem* taxation on business personalty completely, and to adopt some form of in lieu taxation.

   This approach is the direct opposite of full enforcement of the general property tax.



3. To establish a flat rate for State-wide taxation of business personalty, either with or without State administration.

   This approach would seek to cure the tax lightning situation by establishing a rate low enough to be tolerated by business personalty and predictable enough to eliminate the present uncertainty.

4. To establish a classification within the general property tax so that personal property could be locally assessed at set fractions of true or book value.

   If the State wishes to make a start toward a solution of the business personalty tax problem, the least that it could do would be to enact legislation converting the general property tax into a classified property tax.

5. To adopt a classified property tax with respect to land, buildings, machinery and equipment, and to provide some form of in lieu tax with respect to business inventories.

   This approach would meet the basic objection to ad valorem taxation on inventories.

The Sixth Report of the Commission on State Tax Policy was a detailed statistical documentation of unequal general property tax standards throughout New Jersey. Contained in the report was New Jersey's first equalization table -- as a forerunner of the more complete and more refined equalization table now prepared annually by the Local Property Tax Bureau of the Division of Taxation.

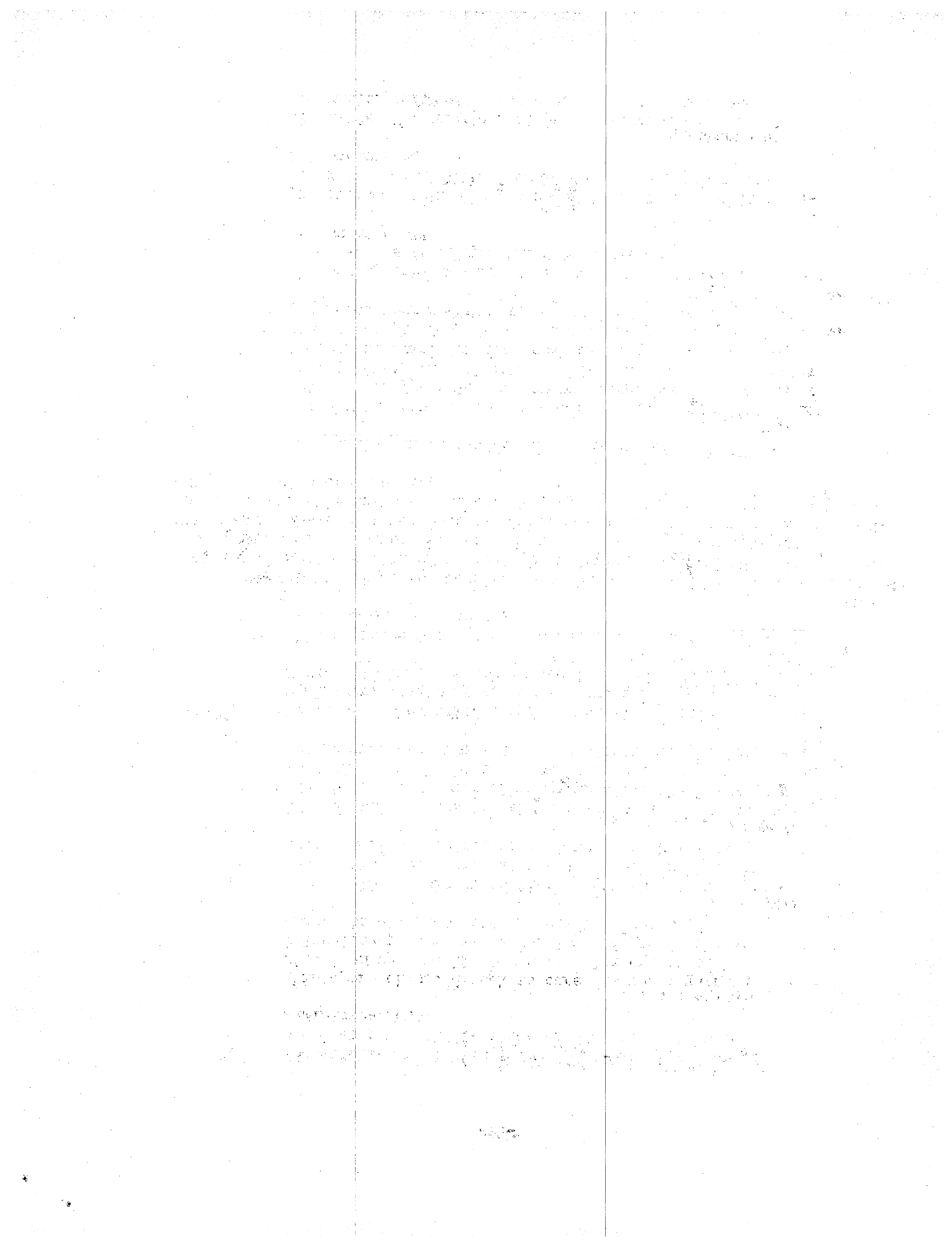
The Commission concluded and recommended:

the elimination of the present morass of inequities in the general property tax can be approached effectively in two ways: (1) By establishing an adequate structure and organization for the local assessment of property; and (2) By placing the assessment process, so far as possible, upon defined and objective standards of value.

the county be established as the primary assessment district with a fully qualified county assessor properly compensated.

provision be made for the absorption of all qualified assessing personnel now employed in the various taxing districts.

the costs of county assessment be apportioned among the municipalities of the county in proportion to



their assessed valuations, and that such costs be a charge against the budgets of the respective municipalities.

The Seventh and Eighth Reports of the Commission dealt with the problems of financing local schools in New Jersey. The recommendations of these reports were significant in the development of property tax reform because they established the practice of giving equalized state aid to local schools on the basis of local taxing ability, as determined by equalized local property assessments. To measure equalized local property assessments, equalization tables were prepared; from those tables came very useful statistics on the assessment process.

In its Ninth Report the Commission again considered general property tax standards, assessments and administration. The Commission offered the following alternatives:

Alternative 1

General Description (40 per cent - 40 per cent - 10 per cent)

Real estate assessment at 40 per cent of its full value.

Business machinery and equipment 40 per cent of its value

Business inventories at 10 per cent of its value.

Household personalty exempt.

Veterans' exemptions unchanged ($500).

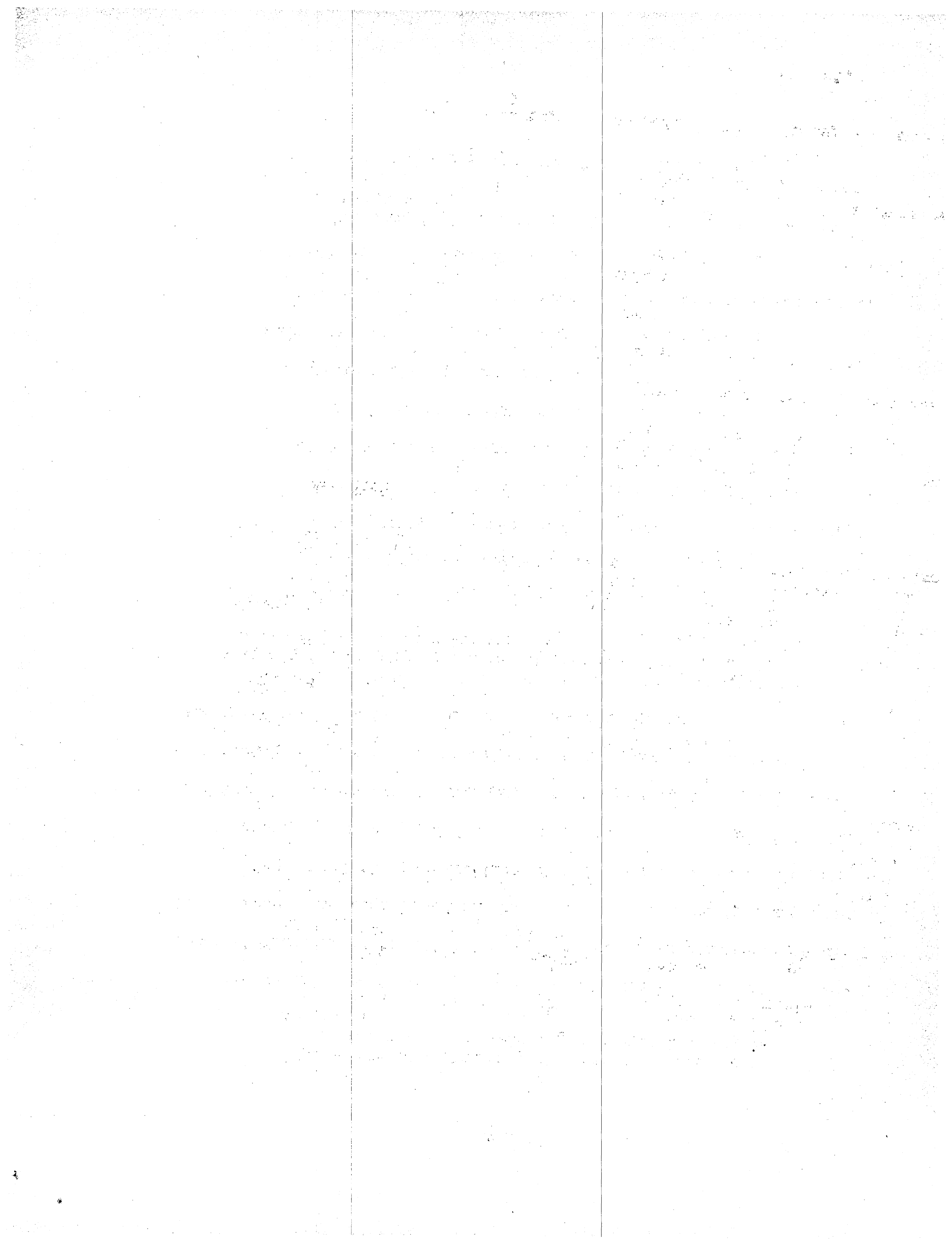
Specific Standards

Real estate - 40 per cent measured from current market values.

Farm Personal Property -

Farm inventories, crops and livestock, 10 per cent market or book value.

Farm machinery - 40 per cent depreciated cost.



Business Personal Property -

Business inventories - 10 per cent book value.
Other business personalty - 40 per cent book value.

Assessment Administration

Business Personal Property -

State assessed for certification to municipalities.
All other property locally assessed.

Alternative 2

An alternative plan complying with Section 2 of the Legislative Resolution (S.C.R. No. 28, Dec. 27, 1956) and which Commissioners Alexander and Dumont believe is the only alternative, may be summarized as follows:

Exempt from Property Taxation	Tax in 1957
Business inventories including farm crops and produce held for sale	$31.0 million
Household personal property................	15.5 million
Total	$46.5 million

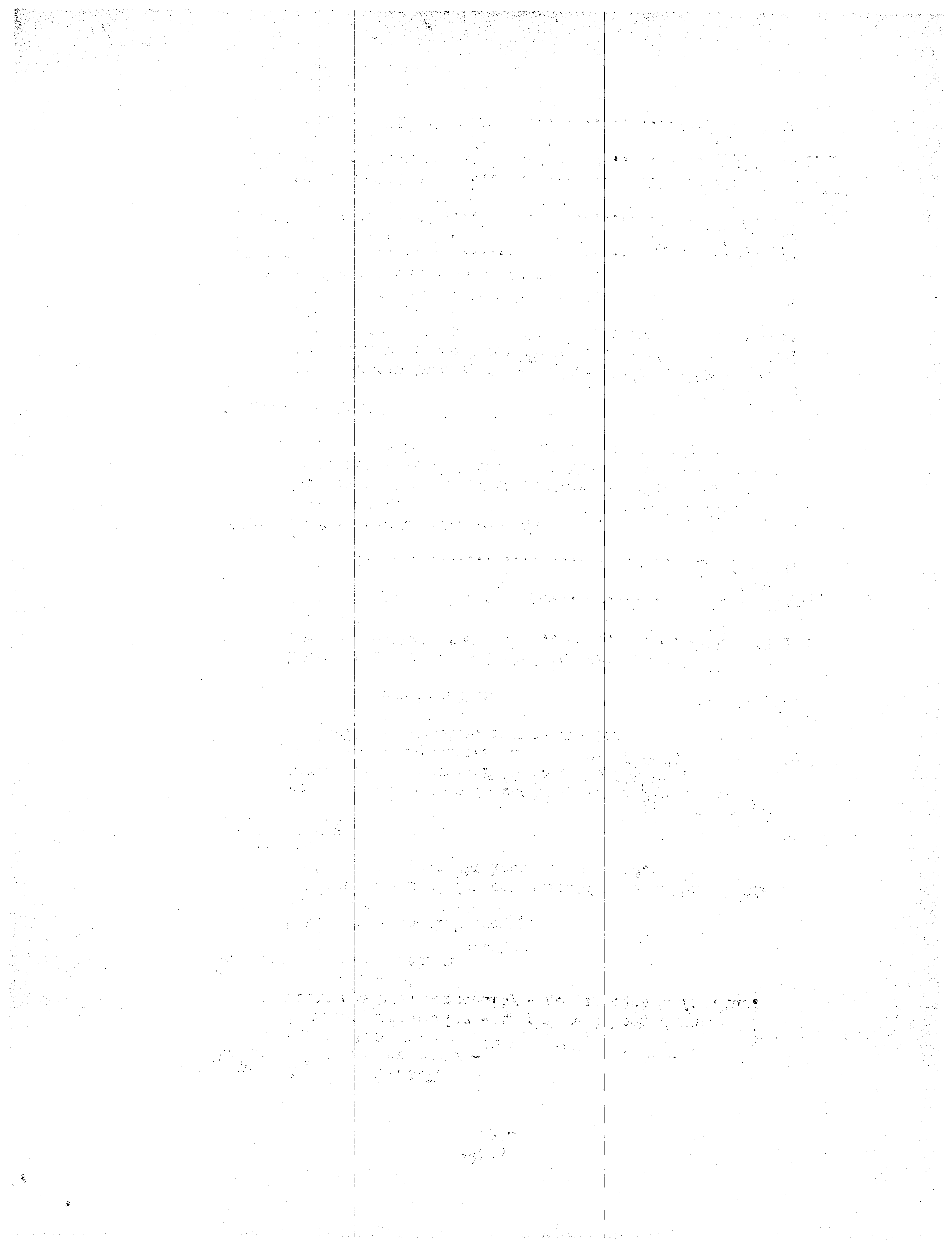
Other Property (real and personal)

Uniform assessment at 40 per cent of full value with provision that full value of business personalty may be presumed to be book value subject to review.

Replacement Tax

Business net income tax - applicable to corporations and unincorporated business - with present Corporation Franchise Tax as a deduction (corporation pays greater of two taxes).

Revised Franchise Tax with 3 per cent income alternative	$68 million
Present Franchise Tax	26 million
I Increased corporation tax	$42 million
Unincorporated business tax (3 per cent)	9 million
Total additional tax	$51 million



State Revenues

> Business income tax rates can be increased to provide additional State revenue - approximately $22 million for each 1 per cent of tax rate.

Commission to Study Law Affecting Industrial Development: Besides the reports of the Commission on State Tax Policy, pressure for tax reform came from the Commission to Study Laws Affecting Industrial Development. Appointed in 1955, this commission two years later submitted eight tax recommendations, asking for complete equalization of real estate taxes, ultimate abandonment of personal property taxes, and a broadening of the tax structure to include a retail sales tax. These were the Commission's words:

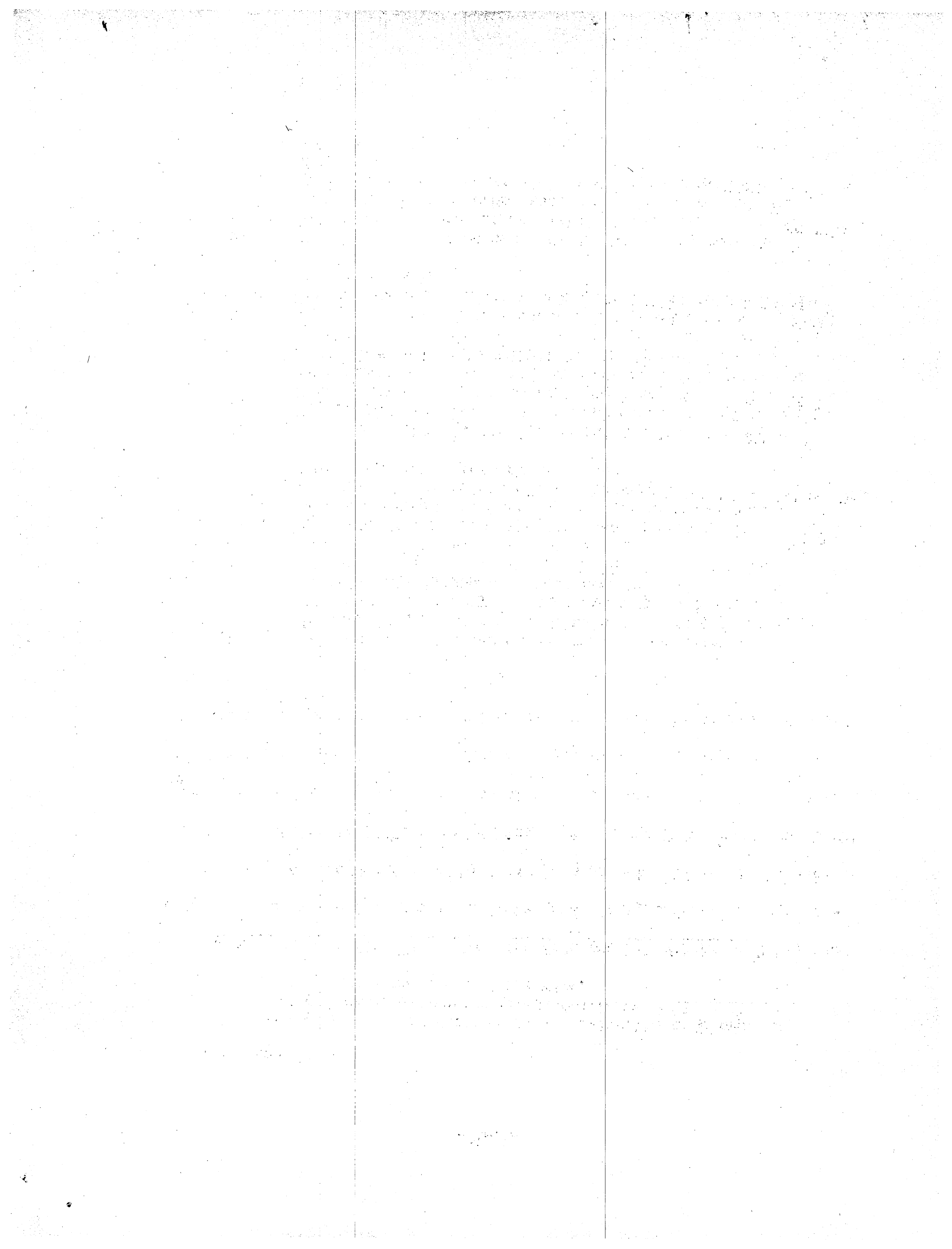
1. Real property be assessed uniformly at the same standard of value throughout the State with no distinction among the types of property (such as industrial, commercial, and residential) and no differences among the municipalities.

2. Immediate amendment of the statutes to provide that tangible personal property be locally assessed at no greater than 50 per cent of fair value. Fair value shall be cost less reasonable allowance for depreciation; but

3. In the near future, the tax on tangible personal property be abolished (including household goods). In lieu thereof it is recommended that there be adopted at the State level a retail sales and use tax, part or all of the proceeds of which would be distributed to the municipalities.

4. If, in order to finance essential expenditures, additional State revenue should be required, a retail sales and use tax be enacted.

5. The corporation franchise tax be amended by reducing to 20 per cent the requirement that 40 per cent of the domestic corporation's intangible assets with situs outside New Jersey must be allocated to New Jersey for purposes of the tax.



6. There be no further increase in the rates of the present franchise tax; that it ultimately be eliminated and replaced by a franchise tax measured by net income (allocated in accordance with the Massachusetts formula); and that this franchise tax measured by net income be made applicable to all business whether incorporated or not.

7. The railroads be treated the same and equally with other businesses in all taxes.

8. The rate of the gross receipts tax applicable to New Jersey motor bus companies be reduced from the present 5 per cent rate and be related to a fair return on property devoted to the public service.

The Commission offered this challenge to those who shrug off its recommendations as politically impractical:

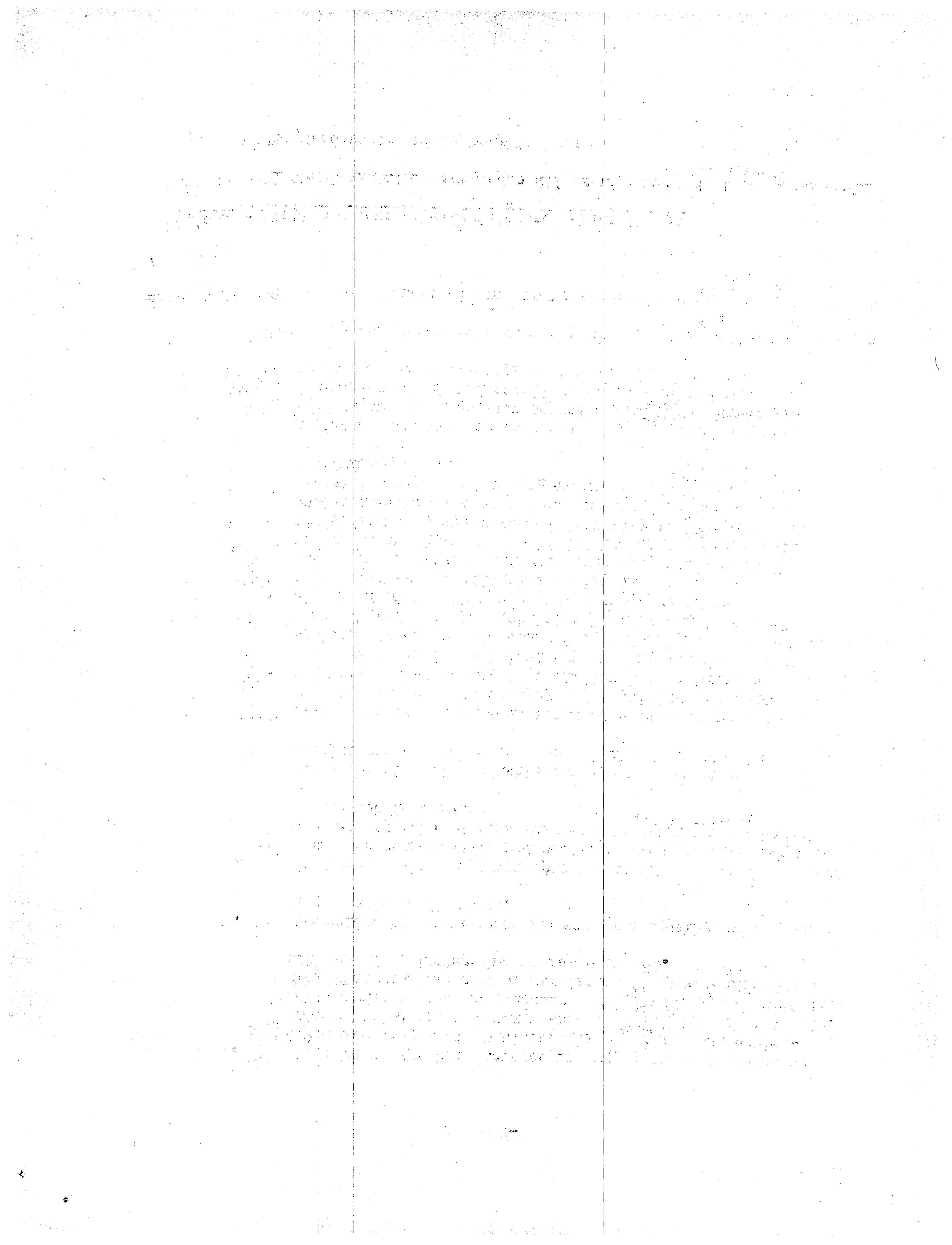
....If a particular recommendation seemed appropriate to the purpose of attracting and retaining industry, the notion that it might be difficult to attain because of possible political unpopularity did not deter the Commission from adopting it. This attitude is not born of desire to be right though ineffectual; but of a strong suspicion that the rift between sound economic policy and good political strategy is not as wide as some people seem to believe. In short, we have faith in the over-all soundness of the thinking of the public mind, in the innate sense of fair play which colors public judgment and decision, and public capacity to choose between genuine long-range benefit and apparent immediate gain....

It is our observation that some measures are declared nonfeasible only because so-called political strategists impute attitudes and reactions to the general public which, in fact, are practically nonexistent.

Clearly, with constitutional barriers overcome and definite proposals supplied by two commissions, it was up to the Legislature to take the next step.

D. <u>Formulating a Law: The Legislature Begins to Act</u>

Until the Legislature adopted a different standard, true value would remain the standard according to this law:



> All property real and personal (except tangible personal property) within the jurisdiction of this State not expressly exempted from taxation -- shall be subject to taxation annually -- at its true value and shall be valued by the assessors of the respective taxing districts -- (NJSA 54:4-1)

> Regarding real estate, the law clearly associated "full and fair" value (true value) with market value, making local assessors responsible for its determination.

> The assessor shall - - - determine the full and fair value of each parcel of real property in the taxing district at such prices as, in his judgment it would sell for a bona-fide sale by private contract. (NJSA 54:4-23)

Prior to 1954, legislative attention to property taxes did not go farther than a re-examination of the method of taxing personal property and a consideration of property tax replacements. In 1954, the Legislature passed the landmark piece of legislation known as the State Equalization Law (Ch. 86, L. 1954).

> While this law made no changes in assessment standards or tax measures, it provided that State aid to schools be apportioned on the basis of a table of equalized valuations for each local taxing district. The table was to be promulgated annually by the Director of the State Division of Taxation. Thus was provided the basis for compiling statistics to measure the extent and form of assessment equality throughout the State. In addition, the preparation of equalization tables resulted in extensive State assistance to local assessors and closer cooperation between the State and County Boards of Taxation. Indeed, New Jersey had acquired an important tool for use in the administration, enforcement, and evaluation of all future tax legislation.

> Following adoption of the State Equalization Law, the Legislature became more aware that New Jersey's property classification problems related to real estate as well as personal property. Equalization tables documented the disparities among real estate assessment ratios in local taxing districts, in different classes of property, and in single properties within each class. These inequalities seemed to compound the difficulties of legislative adjustment. Potential tax shifts resulting from

equalization of local assessments could not be calculated, and pressures upon the Legislature could not be pinpointed in terms of specific objectives.

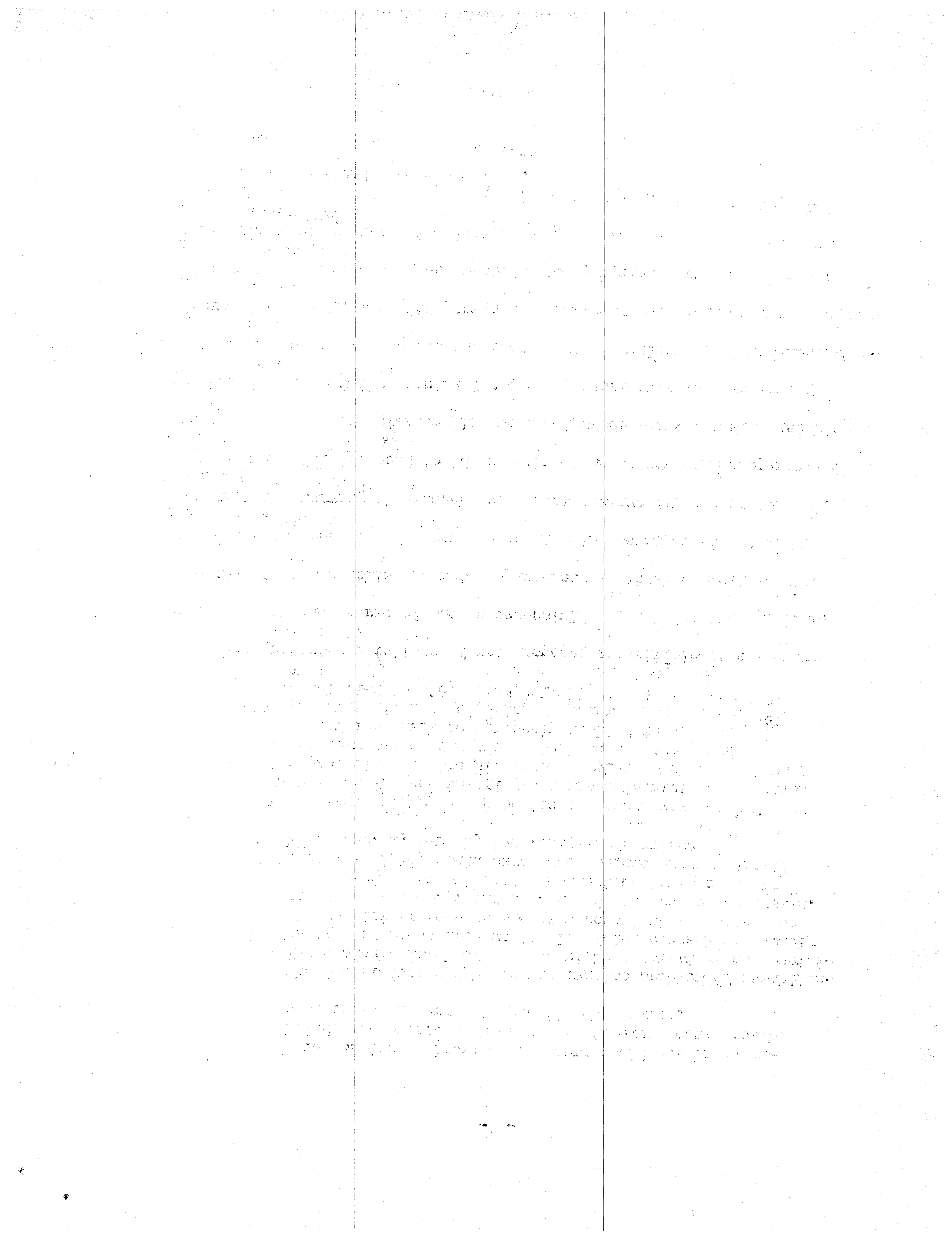
The Legislature sought to resolve the problem of establishing a single level of assessment by permitting each municipality to choose its own level. This approach presumably did not interfere with the requirement that property be assessed uniformly, and it did end the true value system. A proposed constitutional amendment, submitted to the people in 1956, would have added to the present Article VIII, Sec. 1, par. 1, the following sentence:

The Legislature may authorize the governing body of any municipality constituting a taxing district to establish a proportion of the standard of value at which such real property situated therein shall be assessed, and such proportion shall be uniformly applied to all such real property within the taxing district. (Assembly Concurrent Resolution No. 36, Filed July 17, 1956)

Various interpretations of the proposed constitutional amendment arose during the course of the unsuccessful campaign for its adoption. Its defeat at the polls did not end interest in local choice of assessment levels. Nor did it signify a decline in the apparent feeling of urgency accompanying the search for an alternative to 100% assessment.

After 1956, the need to "do something" about personal property and about the true value standard led to the introduction of a wide assortment of bills. At last the groping for a new property tax law was taking place not in investigating commissions, but in the Legislature. The bills introduced between 1957 and 1960 provided an accurate reflection of the progress of the formulation of the new property tax program. Some of the bills which received the most attention were:

Materials to be inserted.

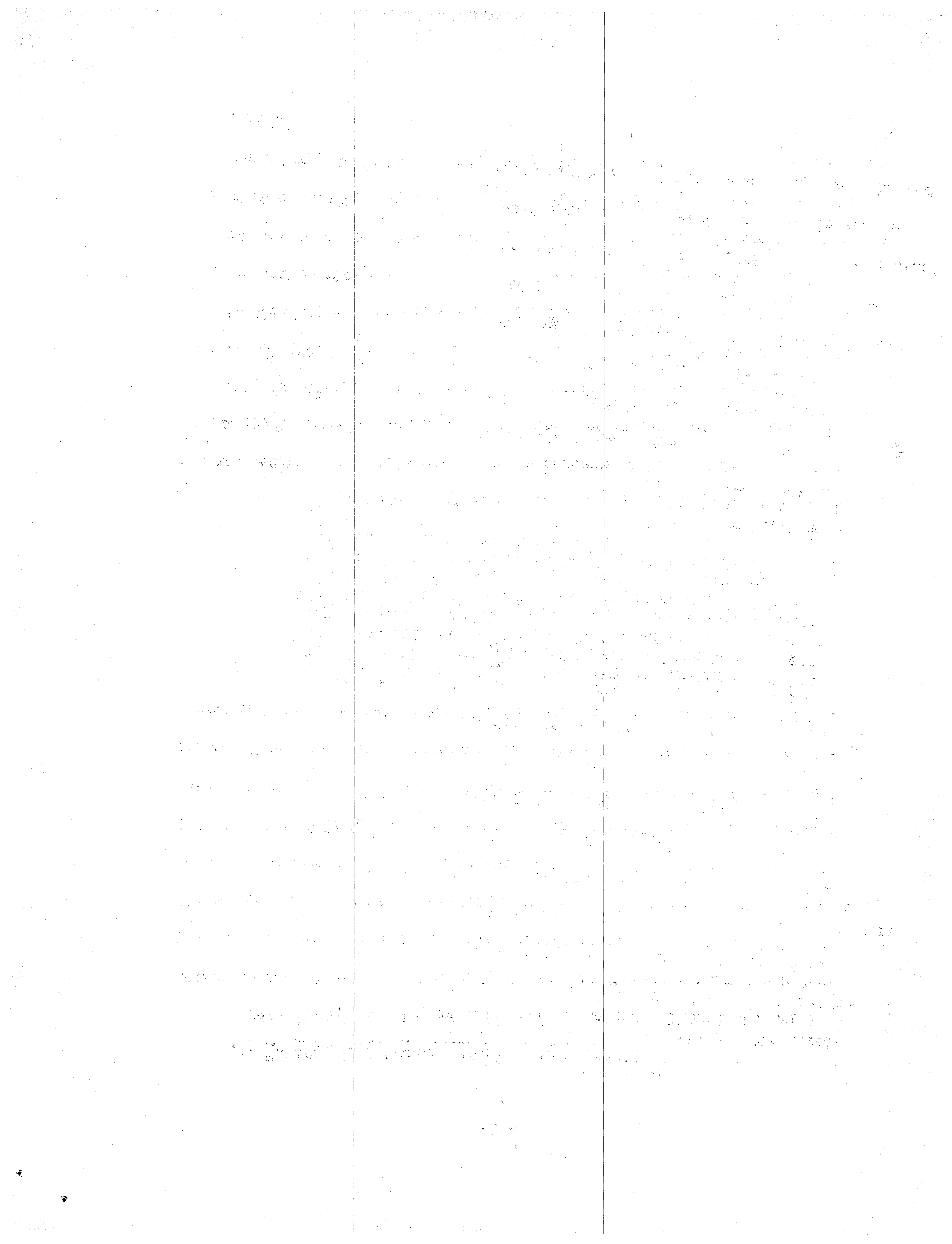


E. Making Reform Urgent: The Courts Decisions

Prior to 1954, New Jersey court decisions had followed the traditional interpretation of "true value" assessment requirements by refusing to grant any reduction in assessed values to any level less than "true value". Taxpayers assessed higher than the average for all taxpayers, but not higher than the statutory standard, were in effect cut off from judicial tax relief. The courts had taken the position that they could not condone any assessment level contrary to the statutory "true value" and could not reduce any taxpayer below that level even when other taxpayers within the same taxing district were not being assessed at 100%.

> The action of the taxing authorities in assessing other property in the same taxing district at less than its true value afforded no reason for reducing the assessment upon the prosecutor's property to less than its true value, for the constitution requires that property shall be assessed for taxation according to its true value, and a reduction below true value would be a violation of that constitutional provision....

By 1954, there were signs of a change in that position. The court was beginning to feel its way toward a concept of "common level" as a basis for taxpayer relief from discriminatory assessments. In the Baldwin case (1954), the court had ruled that an individual taxpayer assessed at a higher percentage of true value than that applied to other property in the taxing district could have relief against discriminatory treatment by having his assessment reduced to the common level prevailing in the district, even though this level was below true value. The court recognized that equality of burden, a constitutional requirement, must override the statutory standard of true value, where the latter has clearly not achieved equality.



Soon after the Baldwin case, the court declared in the Gibralter case that an administrative body like the Division of Tax Appeals, performing a quasi-judicial function, could remedy a discriminatory assessment at true value by reducing it to the common ratio used in the taxing district. The idea was there, but the task of determining the "common level" remained.

The court's need for reliable statistical information was largely answered by the equalization tables, which began to appear annually after 1954. Here was graphic and authoritative proof of the extent of the inequities in the assessment process. Fortified with a constitutional mandate for equality of tax treatment "according to the same standard of value", taxpayers were finding their way to the courts and the courts were finding their way back to the equalization tables. The courts repeatedly stressed that uniformity of assessment, a constitutional requirement, could only be achieved, under existing statutes, by the application of the dreaded 100% assessment standard for real and personal property alike.

In 1956, the trend of judicial decisions was confirmed by the case of Switz vs. Middletown Township. The significance of these decisions was appraised in the Ninth Report of the Commission on State Tax Policy (1958):

> The judicial history of the tax clause of the Constitution since 1947 has resulted in the major tax developments of the past ten years....The Decisions of the courts culminating in Switz vs. Middletown Township, 23 N. J. 580 (1956), will be permanently significant because they deal with equality of treatment in the distribution of the tax burden among separate taxpayers, rather than "equalization" of the total tax rolls among taxing districts. The cases establish these two principles:

> First: Equality of treatment under the tax law is guaranteed to every taxpayer by State and Federal Constitutions -- whatever the standard -- and where a choice must be made between such equality and enforcement of the legal standard, the courts will apply the rule of equality.
>
> Second: The legal standard of assessment will be enforced by the courts at the suit of any taxpayer, and so long as the standard is set by Statute at 100 per cent of the valuation, the courts will mandate that standard. (Commission on State Tax Policy Ninth Report, 1958, p. 13)

The court's words were plain enough. The Legislature had been given two years in which to change the law, or face 100% assessment. Now, the courts were closing in on unequal property assessments from two directions. In the Switz case, the courts had been asked for the first time to raise all assessments to 100%, not to lower someone below true value. Besides relieving taxpayers from discriminatory assessments, the courts were now ordering local taxing districts to comply with the statutory true value standard. The courts were saying that property tax laws meant what they said, and that municipalities were to assess all taxable property uniformly at its true value.

Separate court orders requiring full value assessments of real property were issued in two municipalities (Middletown Township, 23 N. J. 580, 1957, and Lakewood Township, 53 N. J. Super 532).

The judicial attack on assessment inequities was speeded up by the unanimous decision of the Supreme Court in the case of the Village of Ridgefield Park v. the Bergen County Board of Taxation, et al (decided January 25, 1960). In that case, Chief Justice Weintraub expressed the courts' unwillingness to "look the other way" when confronted with dis-

crepancies between statutory requirements and local assessment practices. Judicial reluctance to longer postpone reconciliation between law and practice was stated as follows:

> In Switz we discussed the long history of widespread failure to comply with the Legislative mandate. We had before us and decided the question whether the court could properly look the other way. We agreed we could not. It is the singular situation of the judiciary that issues before it must be met and decided when presented. In this forum, action is inescapable for a court necessarily acts whether it grants or denies relief. Either course affirmatively disposes of the right asserted.
>
> In Switz a majority of the court concluded the issuance of a mandamus to achieve assessment at true value should there be delayed for a period of two years. The manifold problems directly and tangentially involved were weighed, and because of them the right of the plaintiff to relief was suspended for the stated period to the end that the Legislature would have an adequate opportunity to explore the subject. More than two years have elapsed and we assume the necessary facts are on hand for such action by the Legislature as it may find to be in the public interest. In the circumstances, we may not delay the right of plaintiffs to enforcement of the existing statutory policy and thus leave their interests to miscellaneous policies allegedly pursued locally without constitutional or statutory authorization.
>
> The court made it clear that the application of existing law would mean uniform 100% assessments. Any changes in that situation, the court pointed out, would have to be undertaken by the legislature, not the courts. It is urged that assessment of personal property at true value would be unpalatable. Perhaps so; indeed, probably so. But the remedy lies with the legislative branch. The judiciary has no power to devise tax programs or to qualify the existing legislative mandate with a judge's private view of what is just or sensible.

The Ridgefield Park case broadened the scope of the judicial attack, because it reached all taxing districts within Bergen County as contrasted with a single taxing district, and it included personal property, as well as real estate. By making the County Board of Taxation a party to the pro-

ceedings, the Ridgefield Park case also gave new impetus to county enforcement. Besides Bergen, two other County Boards of Taxation (Essex and Monmouth) ordered their local taxing districts to assess all real estate and personal property uniformly at "full value" in 1960. (These orders were withdrawn after adoption of Chapter 51).

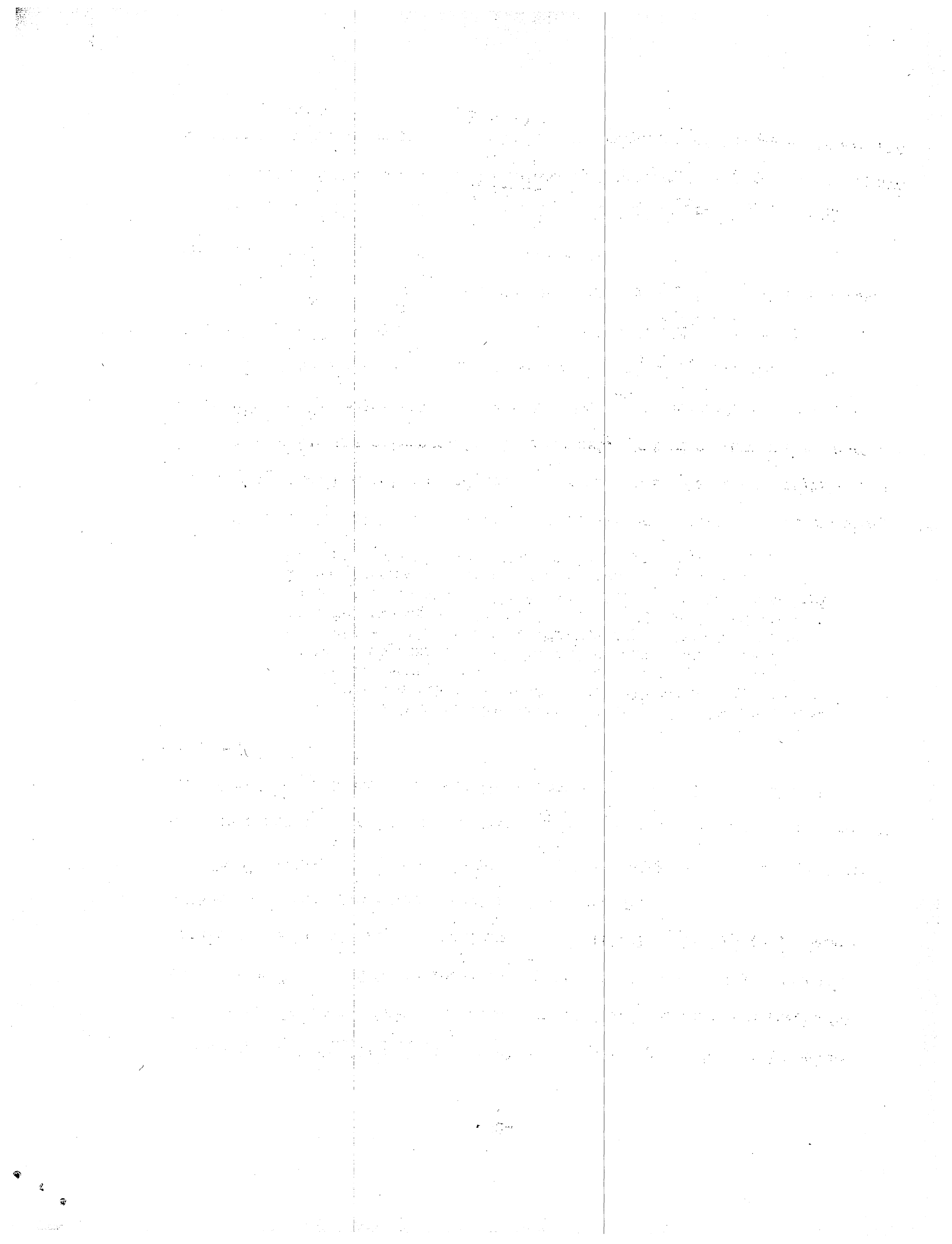
Judicial recognition of the statistical approach to a common level of assessment as a basis for taxpayer relief from discrimination was completed in the Kent case. It was there concluded that relief should be granted:

> ....upon an appropriated basis requiring the individual taxpayer to prove no more than sensibly can be expected of him....Where, as here, the record of sales indicates there is no common level for all or any class of real property and the assessors disavow any effort to achieve one, the average ratio should be deemed sufficient evidence of the level to which reduction should be granted in the absence of circumstances indicating that the average should be modified for that purpose....

If the taxing districts affected by the stream of decisions culminating in the Kent case had not been typical in their assessment practices, the decisions would have attracted little interest. But virtually every district was just as vulnerable to a court order as the ones where actions were brought to a decision. And there was a limit to the length of time that compliance with those orders could be delayed. That is why the Legislature was pressed to change the law before its enforcement and universal assessment at 100% became inevitable.

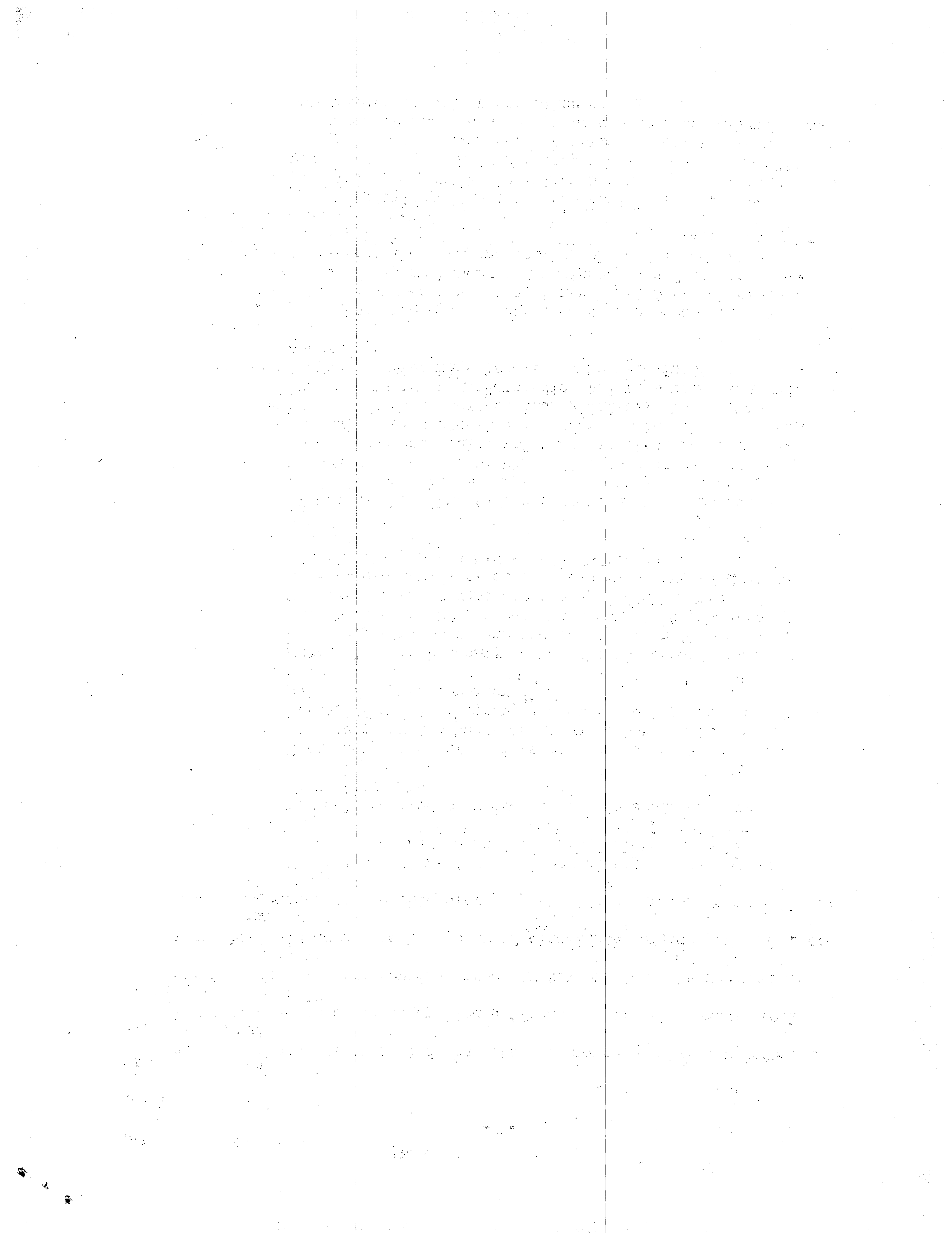
F. Administrative Recognition: Governor Robert B. Meyner

In his 1960 message to the Legislature, Governor Robert B. Meyner recommended a broad program of property tax change, embodying both old



and new ideas. He suggested that each county be permitted to adopt a level of assessment to be applied uniformly to all its taxable real estate. To deal with personal property tax problems, he recommended that the Legislature use its power of classification for personal property. The Governor's eight-point property tax program read as follows:

> All of us must realize that any attempt to revamp our property tax method is doomed to failure unless it commands more than bare approval. Any formula so narrowly enacted carries with it the seeds of endless controversy.
>
> I therefore suggest that we re-examine the subject and not engage in deadlocked controversy over last year's bills. For this purpose, I submit the following eight points for your consideration:
>
> <u>One</u>: Allow each county to set the assessment level for real property, to be applied uniformly in that county. One could be at 20 per cent, another at 40 per cent or whatever level is considered best. Equalization of assessments would, of course, continue for the purpose of allocating state aid and for other purposes, as at present.
>
> If the level within each county is uniform, it makes no difference that the level might vary from county to county. Our Constitution directs that real property be assessed "according to" the same standard of value. The universal state-wide "standard of value" will always be true value or some similar standard. So long as assessments are made "according to" that same standard, different percentage levels may be used in different counties.
>
> <u>Two</u>: Have the statute set the ratio between business personal property and the county level for real property. Thus, machinery and equipment could be one-quarter of the real property level, and inventory one-tenth.
>
> <u>Three</u>: Eliminate the least productive types of inventory, on which the tax might be burdensome, namely raw materials, work in process, small tools and supplies. Also, the desire of farming counties to set a low ratio for farm machinery and equipment can be accommodated without adverse effect on any other county.



Four: Allow each municipality to decide for itself whether it wishes to impose the tax on household property. In practice, that has been the situation anyhow.

Five: The local press of our State should publish the municipal tax rolls over a six-month period. If the effort proved successful, as it did where it was tried, the Legislature could require such publication regularly. This would be an effective way to get the public to insist on the correction of inequity.

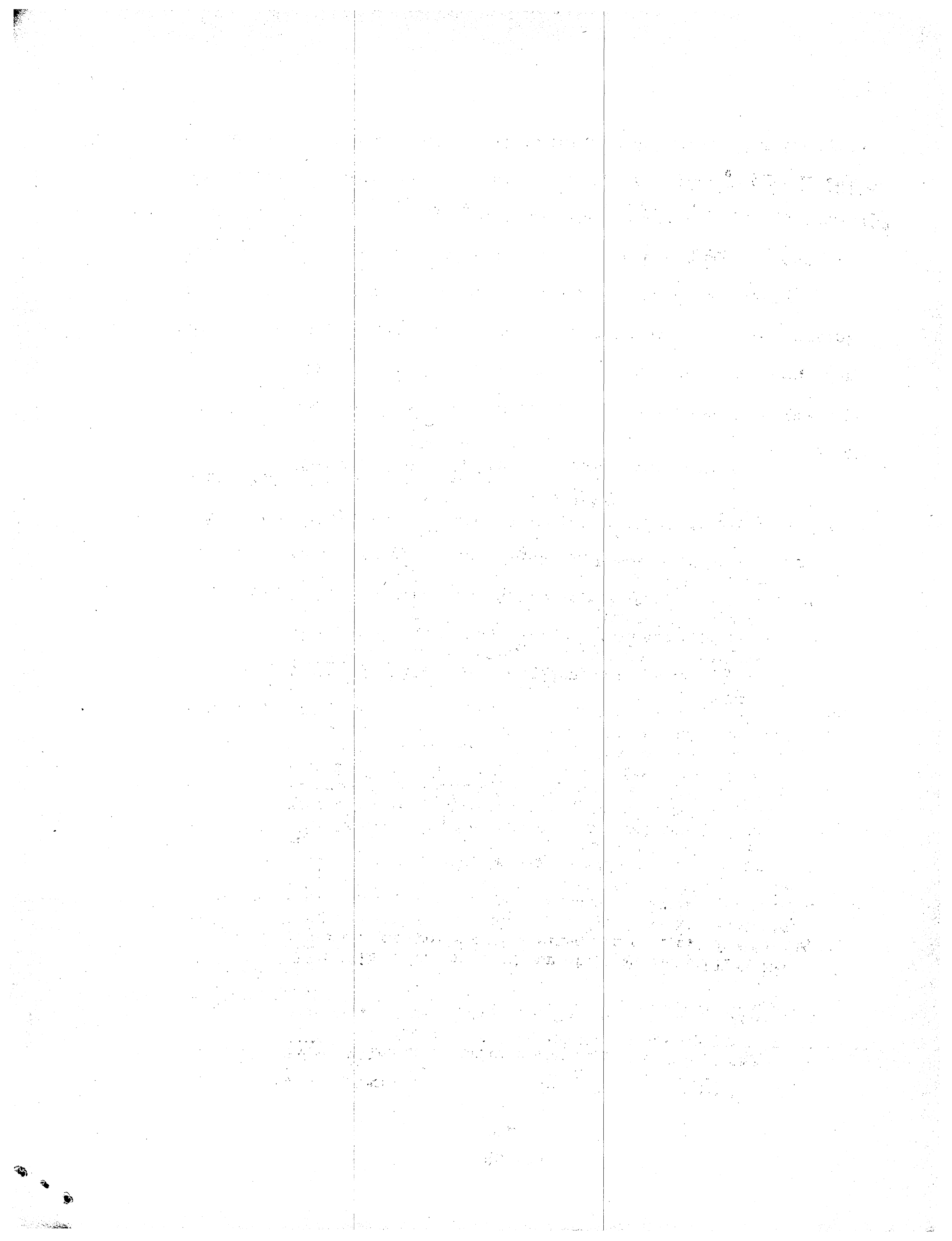
Six: Provide for the professional training of local assessors, for state-wide performance standards, and for competent technical assistance when needed. If this is done, there will be no need for the services of commercial firms. We can provide these services for ourselves with better results and at substantially lower cost.

Seven: Permit, on local option, the use of county assessors or the assessment of property municipalities jointly on a consolidated basis. Some such step is needed if the suggestions already made are to produce more than a temporary victory. The key to the whole problem lies in a high quality of performance in local assessing practices.

Eight: Provide for complete assessment every two or three years, instead of every year.

(Governor Robert B. Meyner's Sixth Annual Message to the Legislature, January 12, 1960)

In Governor Meyner's recommendations could be seen various proposals which the Legislature had been considering for more than two years. But his plan for county choice of assessment levels introduced a new concept into discussions of the assessment process. His suggestion that the "same standard of value" requirement did not preclude assessments at varying percentages of that standard implied a new judicial interpretation. In the Governor's view, assessment according to the same standard did not necessarily mean assessment at the same standard. This interpre-



tation was upheld by the case of Olivia Wrightson Switz v. William Kingsley, Monmouth County Board of Taxation, Township of Middletown and William C. Johnson, decided May 9, 1961.

Governor Meyner's proposed compromise on the taxation of business inventories was also a new idea. The Legislature had long debated whether to tax inventories or to exempt them. The Governor's recommendation that inventories of raw materials, work-in-process, small tools and supplies be exempted while inventories of finished goods remain taxable was the first suggestion that various classes of inventories might be treated differently. (Meyner's suggestion was eventually modified to add work-in-process to finished goods as taxable inventories.)

The first four recommendations were sent to a joint legislative committee for further study. When they emerged from the committee's deliberations, the four recommendations had become part of Assembly Bill 198. On June 15, 1960, A-198 became Chapter 51, Laws of 1960, and New Jersey had a new property tax law.

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