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TAXATION AND SCHOOL SUPPORT IN WEST VIRGINIA

CLYDE L. COLSON*

THE recent Strayer Report of a survey of public education in West Virginia contains recommendations for the improvement of our educational system which should deeply concern every West Virginian who is interested in the progress and future welfare of the state. Roughly, the recommendations of the Strayer Report may be divided into two groups, those concerning administration and those concerning taxation and finance. The administrative recommendations, though helpful, are in fact only secondary. The really important recommendations are those concerning taxation and finance, and of these the most important deals with the need for more school revenue.

Even if every administrative recommendation were put into effect, we would still face the fact that unless something is done to provide more money for schools, we can never hope to have the kind of educational system West Virginians need and deserve. That there is vast room for improvement in the present system is not only amply demonstrated in the Strayer Report but is also clearly portrayed in a recent report of the Committee on Education of the United States Chamber of Commerce which, on the basis of every index used to measure the general educational level, ranked West Virginia consistently in the lower group of states.

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1 See generally, STRAYER, A REPORT OF A SURVEY OF PUBLIC EDUCATION IN THE STATE OF WEST VIRGINIA (1945) hereinafter cited as Strayer Report. This survey was made by a staff of eminent educators under the direction of Dr. George D. Strayer, of Teachers College, Columbia University, at the request of the Legislative Interim Committee, created by Senate Concurrent Resolution No. 6, W. Va. Acts 1945, and charged with the responsibility of studying the entire educational program of the state with a view to its general improvement.

2 Education—an Investment in People, a pamphlet published in 1944 by the United States Chamber of Commerce.
The statement that the really important recommendations of the Strayer Report are those dealing with taxation and finance may be clarified by a homely analogy. Let us assume that our present school system is represented by a Model-A Ford—it would probably be uncharitable to compare it to a conveyance of the "horse-and-buggy age" or even to a Model-T. If we are willing to do without modern transportation, we can improve the performance of the older model car we now have by adjusting the carburetor, putting in new spark plugs, maybe a new distributor, and making other minor changes, which in the aggregate correspond to the administrative recommendations of the Strayer Report; but in spite of all this tinkering, we would still have only a Model-A, however much improved its performance might be. If we want modern transportation such as would be provided by a V-8, not to mention more expensive models and makes, we must, to use a good old West Virginia expression, "put the cash on the barrel head" and buy an up-to-date car.

Starting then with the proposition that real improvement in our educational system can be brought about only if more money is provided for schools, we find that the basic recommendation of the Strayer Report in the field of taxation and finance is that the necessary additional money should be raised locally, which in West Virginia means in the counties. Of course, one possible solution would be an increase in state aid, but for several reasons this was not recommended. In the first place, the state is now devoting to the support of public education almost sixty per cent of its total appropriations from general revenue. This proportion was not found to be too high, but it can not be materially increased without seriously handicapping the state in the performance of its other governmental functions. For these and other reasons it was recommended that state aid should remain substantially at the present level.

Another compelling consideration in support of the recommendation that the necessary additional funds be raised locally is the fact that greater state aid would in all likelihood entail increased centralization of control, which in this state has gone far enough, if not too far, in the field of public education. One of the most accurate measures of a good school system is the degree of local autonomy and control, and since control and financial support nearly always go hand in hand, without a substantial increase in local support we can hardly hope to achieve the constant local

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3 Strayer Report at 571-572. The part of the report and the recommendations concerning taxation and finance were prepared by Dr. Paul R. Mort, Teachers College, Columbia University, one of the leading authorities in the field of taxation for the support of public education.
4 Id. at 103 and 551-554.
interest and oversight that is so necessary for the health of any educational system. As is stated in the Strayer Report,

"The outstanding weaknesses in the structure of public education in West Virginia are the waning of local support and the withdrawal of the schools from popular control. Local finance, local support, local taxation, are the foundation of home rule, and home rule in turn is a long-tested mechanism from which public education has gained strength. The fact that an adequate school system cannot be operated on local support alone; the fact that in the early part of this century the chief base for local taxation—the property tax—came to carry too large a burden in many communities, should not blind us to the wholesomeness of a free system of taxation on property to support an educational program beyond the foundation established by the State."

In order to provide this additional local support, the Strayer Report recommends a general increase in property assessments. This should not be such a startling recommendation since the law now requires that property be assessed at one hundred per cent of its true and actual value; but of course everyone knows that this is never done. As the best method of bringing about compliance with the present assessment law, it is suggested that we adopt the Wisconsin system of centralized state assessment.

One objection that has been voiced to this suggestion is the fact that it runs counter to the basic philosophy of local autonomy and home rule which is so strongly relied upon in other parts of the Strayer Report. Those who, in regard to the control of the educational system, share Strayer's fear of the evils which almost always accompany centralization may well question the advisability of accepting the principle of centralized control in the field of assessment, which touches every West Virginia property owner in his pocketbook where it hurts the most. Possible answer to the suggestion is the fact that under existing law the state tax commissioner now has all the power he needs to supervise and control assessments, and thus bring about not only equalization of assessments as among the various counties but also full compliance with the law requiring assessment at true and actual value. Of course, since the law has been on the books no tax commissioner and no administration has ever seen fit to exercise supervisory power over assessments, and this for obvious reasons, political and otherwise. In any event, since no important group has evidenced any desire to support the idea of central-

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6 Id. at 536-537.
6 Id. at 541 and 561.
7 Wis. Stats. (1943) §73.03.
ized assessment, we may safely conclude that there is little likelihood that this suggestion will be adopted.

Possibly in anticipation of this opposition, it was suggested as an alternative that we follow the New York plan, under which state aid for the support of schools is distributed on the assumption that assessments represent one hundred per cent of full value, whether in fact they do so or not. The local assessors are permitted to assess property at any level they think proper, but prior to the distribution of state aid the state tax commission reviews all assessments, and by a system of spot checking determines the rate of assessment in each local district. On the basis of this information the state commissioner of education then ascertains the full value of the property in each locality. Thus, if a county which according to the state tax commission assesses property at sixty per cent of full value has a total assessed valuation of six million dollars, the commissioner of education fixes the true and actual value at ten million. Next, the local share of the cost of the foundation school program is determined by applying a specified tax rate to the theoretical full value rather than the actual assessed value. Then, proceeding as if the local district had in fact raised its full share, the commissioner of education in distributing state aid makes up only the difference between the total cost of the foundation program and the local share. As a consequence, each local assessor is under strong pressure to increase assessments so that his district will not be penalized in the distribution of state aid.

Substantial opposition has developed against the adoption of the New York plan. It is feared that unless large additional funds are provided by the state, which seems unlikely, too many counties would receive substantially less state aid than under the present method of distribution. Therefore, as in the case of the first suggestion, there seems to be little chance that the alternative will be accepted.

Does this mean then that nothing can be done? Assuming that we the people of West Virginia are willing within reason to pay whatever price is necessary to provide an adequate educational program for our children, and assuming further that it is our desire to do so without courting the dangers of centralized control, can we achieve the goal of greater local support without drastic change in our statutes and constitution? It is believed that we can, which is the justification, if any, for the writing of this article.

There are in fact several avenues of approach to the problem, the first of which has to do with our method of selecting assessors. Under the present provisions of the constitution an assessor is elected for a term of

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9 16 N. Y. CONSOL. LAWS (McKinney, 1945) art. 18, §491.
four years and is eligible to succeed himself. One of the stock arguments advanced for permitting the assessor to hold office for two or more consecutive terms is that it takes him several years to learn his job, and that in order to get the benefit of the training he acquired during his first term, the sensible thing to do is to re-elect him. In practice, however, long and costly experience shows that all too often the official acts of the assessor are colored by his desire for re-election, with the result that almost never does the general assessment level go up, but either remains constant or actually goes down. This again is entirely understandable, for rarely indeed can a vote be won by raising the voter’s assessment.

It has therefore been suggested that the constitution be amended to provide that assessors shall be elected for a term of eight years and that they shall be ineligible to succeed themselves. Under this arrangement we could still have the benefit of the experience gained during the first few years, and at the same time remove the well-nigh irresistible temptation to play politics with the office. It is believed that this proposed amendment would receive the support of the assessors themselves, and it would certainly help raise assessments throughout the state to a more respectable level, thus increasing the tax revenue of all local levying bodies.

A second suggestion often heard, and one of the minor recommendations of the Strayer Report, is that the legislature make a reallocation of levies among the various taxing units. The present allocation is as follows: State—five-tenths of one per cent; county courts—twenty-eight and six-tenths per cent; county boards of education—forty-five and nine-tenths per cent; and municipalities—twenty-five per cent.

Since the present allocation was first made we have heard constant complaints from the county boards of education and the municipalities that they are not adequately financed and that the state should provide for them new or enlarged sources of revenue. On the other hand, it appears that most if not all county courts have sufficient funds to meet their normal requirements. Indeed, one of the arguments advanced against any general increase in assessments is that such an increase would provide for county courts more money than they legitimately need.

The fact that county courts have had adequate funds has contributed in no small degree to the reluctance of county courts to raise assess-

11 For example, the county-wide cuts in assessed valuations, some as high as forty per cent, which were quite properly made during the early days of the depression, have not yet been restored in many counties, despite the fact that in the last ten years property has at least doubled in value.
12 Strayer Report at 542-544.
13 W. Va. Rev. Code (Michie, 1943) c. 11, art. 8, §§6a-6d.
ments when sitting as boards of review and equalization. It would therefore seem advisable to reallocate the levies, decreasing the share of county courts and increasing the shares of municipalities and county boards of education. If we reduce the county court levy to twenty-two per cent, we can increase the board of education levy to fifty per cent and that of municipalities to twenty-seven and one-half per cent. Possibly even larger increases than these could be made. Such a reallocation would unquestionably provide much additional revenue for municipalities and boards of education, and by putting the pressure of self-interest on the county courts, would encourage them to raise assessments in order to provide sufficient funds for their own needs.

The fact that county courts, when sitting as boards of review and equalization, are unwilling to raise assessments made by the county assessors has led to a third suggestion, which is that we should change the membership of the board of review and equalization. Since the tax yield is the product of the rate of levy and the assessed valuation, the total revenue of each local levying body is to a very large extent dependent upon the action of this board. It is indeed strange, therefore, that municipalities and boards of education, which together levy more than seventy per cent of the total tax, have no representation on the board as presently constituted, whereas the county court, which levies less than thirty per cent, is made the administrative board of review with full power to decide the question of raising or lowering assessments. 14

We should therefore reorganize the board of review and equalization, giving the local levying bodies equal representation, and it might even be advisable to go further and add one or more representatives of the general public. Many of the duties of the county court were taken over by the state following the 1932 adoption of the tax limitation amendment. The change in 1933, abolishing the former board of review and equalization 15 and substituting the county court, was largely occasioned by a desire to find enough work for the county court to justify payment of the salaries of its members. Such considerations should not outweigh the obvious fairness of giving the other levying bodies equal representation on the board.

A fourth suggestion is that something be done—just what is not yet clear—to improve our method of assessing personal property, a large part of which escapes taxation entirely. The need for improvement is

14 Id. at art. 3, §24.
15 W. Va. Rev. Code (1931) c. 11, art. 3, §24. As formerly constituted the board of review and equalization was composed of three members appointed by the board of public works from among the citizens of the county who were “freeholders and entitled to vote.”
evident. For example, in one of the richer counties of the state the total assessed value of all personal property in the county on the assessment day, January 1, 1944, was slightly less than fifty-six million dollars. Yet, on June 30, 1943, the deposits in only five banks in the county totaled more than a hundred nineteen million dollars and on June 30, 1944, more than a hundred forty-three million. No published figures were found for total deposits on January 1, 1944, but even after making a generous deduction for public funds and other tax-exempt deposits, and after taking account of the practice indulged by many of withdrawing deposits and purchasing tax-exempt securities at the end of the year, then selling and redepositing after the first of the year, it is still obvious that the deposits in these five banks on the first of January exceeded by many millions of dollars the total assessed value of all personal property in the county. When we remember that the total assessment includes the value of household goods, automobiles, notes, merchandise and many other kinds of personal property, we can only marvel at the ease with which such assets are hidden from the assessor.

Although this county may afford the most striking illustration, a similar condition is prevalent throughout the state. If some method could be devised by which all personal property would be placed on the tax books, we would be able to bring about a very substantial increase in local revenue, but on the basis of the experience of other states such a method is yet to be discovered. In the last analysis, it would seem that this problem is largely one of common honesty and civic responsibility.

As a fifth proposal it is suggested that we provide additional sources of revenue for county boards of education by conferring upon them, as we have already done in the case of municipalities, the power to levy capitation, license, privilege or other similar taxes. Such action has been taken with some degree of success in other states. For example, in Penn-

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18 *West Virginia Blue Book* (1945) 898, listing by counties the total assessed valuation for 1944 of all personal property.
17 *West Virginia Blue Book* (1943) 680-687, listing total deposits on June 30, 1943, in state and national banks.
18 *West Virginia Blue Book* (1944) 650-657, listing total deposits on June 30, 1944, in state and national banks.
19 An Abstract of Reports of Condition of State and National Banks, compiled and published by the West Virginia Department of Banking, shows combined deposits of more than a hundred twenty-four million dollars on December 31, 1943, in all nine banks in the county, but does not show deposits in each separate bank.
20 The compilation referred to in the last note shows that on December 31, 1943, bank deposits for the whole state totaled more than five hundred forty-five million dollars, whereas according to the list cited above in note 16, the total assessed valuation of all personal property in the state on the following day, January 1, 1944, was less than four hundred ninety-two million dollars.
sylvertonia a substantial part of local revenue for the support of schools is raised by a so-called education tax, which in reality is nothing more than a five-dollar poll tax. 22

The argument in favor of the levy of such taxes by boards of education is that since many parents whose children attend the public schools own no real estate and in many cases no personal property over and above the two hundred dollar exemption of household goods, they contribute little if anything toward the cost of educating their children. This argument seems, however, to overlook the proposition that these parents rent their homes and that they and not their landlords are the ones who ultimately pay the taxes on the property. Furthermore, they also pay a substantial part of the consumers sales tax and other taxes collected by the state, much of which is returned to the counties as state aid for the support of schools.

A more compelling argument, however, against the use of such taxes to any large degree is the expense and administrative difficulty involved in their levy and collection in the fifty-five counties, but most important of all is the fact that such taxes are in no way related to the taxpayer's ability to pay, and consequently more often than not they fall most heavily on those who are least able to pay. It would therefore seem that this proposal does not offer an adequate and satisfactory solution of the problem.

As a matter of fact the adoption of any one or even all of the above proposals would go only part of the way toward achieving our goal of sufficient additional local revenue. There is little hope of doing so without utilizing to a much larger degree than at present, or than the above suggestions make likely, the local property tax which throughout the nation is the foundation stone of all school systems that are rendering the best and most efficient service in the field of public education.

This brings us to the sixth and it is believed the most important proposal, which if adopted will enable us to recapture and use a portion of the potential taxing power that has heretofore been frozen, but which is properly available under a correct interpretation of our tax limitation amendment.

Before attempting a detailed explanation of the method by which this can be done, we should first examine the language of the tax limitation amendment in order to determine its exact meaning. Obviously, any proposed legislative action must stay within the limits established by the constitution, for nothing is clearer than the proposition that any

levy in excess of the limit fixed by the constitution is illegal, and that any effort to evade the limit by indirection is sure to fail.

The soundness of our contention that there exists within the constitutional limits substantial taxing power which is not now being utilized, but which may be made available by action of the legislature, depends upon the accuracy of the following statement:

_The maximums fixed by our tax limitation amendment on the total levies which may be laid upon the various classes of property "on each one hundred dollars of value thereon" are maximums to be determined on the basis of true and actual value and not on the basis of assessed value._

Let us first examine this proposition on principle before turning to the authorities that support it.

Assume that you own and occupy a residential property the true and actual value of which is ten thousand dollars, and make the further unlikely assumption that the assessor has actually done what our present assessment law requires him to do and has assessed the property at its true and actual value, namely, ten thousand dollars. The constitution provides that the aggregate of annual taxes levied on this property shall not exceed one dollar on each one hundred dollars of value, which in this case means that a tax of more than one hundred dollars would be unconstitutional. But it also means that any tax up to and including one hundred dollars is within the maximum limit and is therefore constitutional.

Of course, everyone knows that no assessor in the state complies with the requirement of our assessment law that property be assessed "at its true and actual value." Hence, we will be much nearer the truth if we assume that your ten thousand dollar property is assessed at five thousand dollars. Under the present practice, a levy of one dollar on each one hundred dollars of this assessed value would yield fifty dollars, which is only half of the tax permissible under the tax limitation amendment. But note that it is also only half of the tax that would have been collected had the assessor complied with existing law. If we use the assessed value as the tax base, we would have to levy at the rate of two dollars on each hundred dollars in order to reach the limit set by the constitution.

It seems clear, therefore, that in this illustration fifty dollars of the total potential taxing power has been wasted. Furthermore, as a result of the failure of the assessor to perform the duty required of him by law,
you, as owner, have successfully evaded the payment of half of the taxes that would otherwise have been levied upon your property. Certainly, an effort by the legislature only to find some method of utilizing the potential taxing power that exists within the constitutional limits may not fairly be called an attempt to evade those limits. Rather would it be an attempt to prevent the evasion of taxes properly leviable under our tax limitation amendment.

There seems to be no escape from the logic of these propositions; nor can the necessity or the desirability of their application be questioned. Let us turn then to an examination of the authorities, in order to see whether anything in the law on the subject compels us to place a strained construction on the otherwise plain language of our constitution.

In the first place, it should be noted that some constitutional tax limits are framed in terms of a rate to be levied on the assessed valuation. For example, the Michigan Constitution provides that:

"The total amount of taxes assessed against property for all purposes in any one year shall not exceed one and one-half per cent of the assessed valuation of said property..."26

Under such a provision there is obviously no room for the argument that the tax limit should be determined on the basis of true and actual value rather than assessed value. We should therefore place to one side all cases involving tax limits which are expressed in terms of assessed valuation.

Many constitutional tax limits, however, are drafted like ours in terms of a rate to be levied on each dollar or on each one hundred dollars of "valuation," or "value of taxable property," without any mention of what valuation is intended. Commenting generally on the meaning of tax limitations, one leading authority on taxation has this to say:

"The constitutional provisions in the several states, and also statutory provisions, in fixing the tax limit, generally name a certain percent of the 'valuation' or 'assessed valuation' of the property as the basis for calculation. Where the tax limit is a certain percent 'on each dollar of valuation of taxable property,' the basis is the actual value and not the assessed value of the property."27

Only two cases are cited in support of this proposition, and only one of these, a Nebraska case, involved a constitutional limitation. A careful search, however, has failed to disclose any other case directly in point, either supporting or contradicting this statement of the general rule.28

27 1 Cooley, TAXATION (4th ed. 1924) §171.
28 For a possible dictum to the contrary, see State v. Birmingham So. Ry., Co., 182 Ala. 475, 483-485, 62 So. 77 (1913), where the court was discussing not a tax limitation but a tax levy required by the constitution. The argument on this point was more than adequately answered in the dissenting opinions. The actual holding
The Nebraska case referred to is *Cunningham v. Douglas County*. In our discussion of this case it will be interesting to note how closely the provisions of the Nebraska constitution parallel those of our own tax limitation amendment. In order to bring about uniformity and equality of taxation throughout the state, the Nebraska constitution says:

"The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property and franchises, the value to be ascertained in such manner as the legislature shall direct..."\(^{29}\)

The corresponding provision of the West Virginia constitution is:

"Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law."\(^{30}\)

The tax limitation involved in this case was fixed by the Nebraska constitution as follows:

"County authorities shall never assess taxes the aggregate of which shall exceed one and a half dollars per one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county."\(^{31}\)

Likewise, though the West Virginia constitution provides different limits on the tax that may be levied on various classes of property, the limit, for example, on the taxation of Class I personal property is stated thus:

"... the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture... shall not exceed fifty cents on each one hundred dollars of value thereon..."\(^{32}\)

The limitation on the taxation of each of the other classes of property is phrased in similar language.

Pursuant to the first provision of the Nebraska constitution quoted above, the Nebraska legislature, being somewhat more realistic than our own, required that valuation for assessment purposes be fixed at only twenty per cent of true and actual value. Prior to the enactment of the statute involved in the *Douglas County* case the legislature had also pro-

\(^{29}\) 104 Neb. 405, 177 N. W. 742 (1920).
\(^{30}\) Neb. Const. art IX, §1.
\(^{32}\) Neb. Const. art IX, §5.
\(^{33}\) W. Va. Const. art X, §1.
hibited the levy of any taxes in excess of a dollar and a half on each one hundred dollars of assessed valuation. It is thus seen that up to this point the situation in Nebraska and West Virginia is substantially the same, except that we indulge the polite fiction that assessed value equals true and actual value, whereas in many counties it more nearly approximates the twenty per cent level fixed by law in Nebraska.

With this background in mind, we come now to the facts in the case. In 1919 the court house in Douglas County was destroyed and it was impossible for the county authorities to build a new one without raising considerably more revenue than was available under existing law. For some reason it was thought that “in the emergency” to submit the question of a bond issue and the levy of additional taxes to a vote of the people of the county would be too slow a procedure. The governor was persuaded to call a special session of the legislature, at which an act was passed granting to the county board power to issue the necessary bonds and to levy for their payment a tax “not exceeding, together with all other tax levies, fifteen (15) mills on the dollar upon the actual or full market valuation of the property in the county . . .” Thus, the act authorized the levy of a tax up to a dollar and a half on each one hundred dollars of true and actual value, or up to seven dollars and a half on the hundred dollars of assessed value. In other words, it would allow the county authorities “to raise five times as much money for general county purposes as they had formerly been empowered to levy.”

Against the contention that the act was unconstitutional on the ground that it would permit the levy of a tax in excess of the limit fixed by the constitution, the court without dissent on this point upheld the validity of the act. In its discussion of the question, the court said:

“The tax, combined with others, not being in excess of $1.50 for $100 valuation and the valuation not being greater than the actual or market value, S. F. No. 1 can hardly be said to be contrary to the constitutional provision.”

It was also held, with only one dissent, that the act did not violate the constitutional prohibition against the enactment of special legislation. Query, however, whether on this point the dissent did not have the better of the argument, but this query in no way throws doubt on the soundness of the first holding.

The other case in support of our main proposition is Eldridge v. The City of Bellingham. Although for many years the Washington legisla-

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84 104 Neb. 405, 408, 177 N. W. 742 (1920).
85 Id. at 409.
86 Id. at 407.
87 106 Wash. 96, 179 Pac. 109 (1919).
ture required that property be assessed "at its true and fair value," in 1913 the law was amended to provide that "property shall be assessed at not to exceed fifty per cent of its true and fair value in money."\textsuperscript{38} Under this law, the 1918 assessed valuation of property in the city of Bellingham was equalized at forty per cent of actual value. The charter of the city contained the following tax limitation:

"The aggregate of all taxes levied for city purposes, exclusive of bond interest and sinking fund levies, shall not exceed in any one year, eight mills on each dollar of valuation of taxable property."\textsuperscript{39}

The 1918 tax levied by the city was thirteen mills on each dollar of assessed valuation. The plaintiff paid under protest the total tax levied on his property, and then sued to recover the part realized from the levy in excess of eight mills. Reversing a judgment in favor of the plaintiff, the Washington court, with two judges dissenting, had this to say:

"It is argued by counsel for respondent that §346 of the city charter, in speaking of the levy not to exceed 'eight mills on each dollar of valuation of taxable property,' must be construed as meaning 'eight mills on each dollar of assessed valuation of taxable property.' The fact that the construction contended for would materially alter the results argues, of itself, that there is such a difference between the meaning of the words 'valuation of taxable property' and 'assessed valuation of taxable property,' that we are not permitted, under the guise of construction, to import into the section the word 'assessed' to limit or qualify the word 'valuation.' It is true that, in 1904 when the charter was adopted—if we assume that the county assessor obeyed the law and assessed the property at its true value—at that time the charter would have meant the same whether the word 'assessment' or the word 'valuation' was used; but the fact that the general law has been since so changed that the two words are no longer synonymous in this respect affords no reason to hold that the word 'valuation,' which then and now means the same thing, should be lifted out of the charter, and the word 'assessment' or the words 'assessed valuation,' that now mean a different thing from what they did formerly, should be substituted therefor. We must stay by the language used in the charter."\textsuperscript{40}

After pointing out that a levy of thirteen mills on the assessed value of forty per cent was considerably less than a levy of eight mills on full value, the court then stated its holding as follows:

"Under a law such as §346 of the charter of the city of Bellingham, power to levy taxes for city purposes, so far as the value of the property is concerned, is controlled by the actual rather than the assessed valuation of the property; and the designation of a specified

\textsuperscript{38} Id. at 98.
\textsuperscript{39} Id. at 97.
\textsuperscript{40} Id. at 103-104.
number of mills of a higher numerical order than the number stated in the charter levied upon the assessment as equalized will not disturb the validity of the tax provided the tax thus levied is within an amount which would equal a levy of eight mills, allowed by the charter, upon the actual value of the property."\(^{41}\)

In view of the unanswerable logic of these opinions and in view of the fact that there are no decisions to the contrary, we may safely say, both on principle and authority, that under a proper construction of tax limitations we must fix the maximum tax that can be levied by applying the specified rate to the true and actual value, unless the language of the limitation \textit{expressly} requires that the rate be applied to the assessed value.

There being no such express requirement in the West Virginia tax limitation amendment, we can only conclude that the maximum limits fixed by our constitution should be determined on the basis of true and actual value. This conclusion is not only fortified but is made well-nigh impregnable by reason of the fact that the framers of our constitution knew how to express a limitation in terms of assessed value, if that was what they intended. Thus, in placing a limit on the total bonded indebtedness that may be incurred by any political sub-division of the state, our constitution provides that such indebtedness should not exceed "five per centum on the value of the taxable property therein to be ascertained by the last assessment for state and county taxes."\(^{42}\) Applying the rule of \textit{expressio unius} and the rule that a constitution must be construed as a whole, we are forced to decide that, having expressly phrased the bond debt limit in terms of assessed value, the framers of our constitution would have used similar language in the tax limitation amendment had they intended to fix the tax limit on the same basis; therefore, since in the tax limitation amendment they spoke only of value, with no qualifying language, they must have intended to have this limit determined on the basis of true and actual value.

The point under discussion has never been raised in this state, but there is nothing in any of the cases construing our tax limitation amendment\(^{43}\) that is inconsistent with the interpretation here proposed. Apparently the court in all these cases tacitly assumed that assessed value and actual value were one and the same, as indeed they are, at least in theory, under our present law. Certainly the court ought not to be criticized for relying on the presumption that in the absence of evidence to the con-

\(^{41}\) Id. at 105-106.
\(^{43}\) Finlayson v. City of Shinnston, 113 W. Va. 434, 168 S. E. 479 (1933); Bee v. City of Huntington, 114 W. Va. 40, 171 S. E. 539 (1933); Wilson v. County Court, 114 W. Va. 603, 175 S. E. 224 (1934). See also Brannon v. County Court, 33 W. Va. 789, 11 S. E. 34 (1890).
trary the assessors, as public officials, are presumed to have performed all duties required of them by law, including their duty to assess property at its full value. Since there was no evidence in any of these cases to prove a lower level of assessments, it would probably be unfair to argue that the court should have taken judicial notice of the fact that assessed values were substantially below actual values, however well the fact may have been known by individual members of the court, and should therefore have decided the point even though it was not raised.

All of which brings us to a statement of the method by which the legislature can release a portion of the potential taxing power which though now unused is yet within the limits fixed by the constitution. It is proposed: (1) That our assessment law be amended so as to require that property be assessed at sixty-six and two-thirds per cent of its true and actual value.\(^4\) (2) That authority to lay an additional school levy of not more than fifty per cent of the normal levy be granted to the board of education of any county in which a majority of the qualified voters favor such increase.

It should first be noted that this proposal involves no such drastic departure from existing practice as was sanctioned in the Douglas County case, in which a four hundred per cent increase was provided for without any vote by those concerned. The increase here proposed is only fifty per cent, and not even that much would be permitted unless a majority of the qualified voters give their consent.

The suggestion that the assessment level be fixed at sixty-six and two-thirds per cent of actual value is based upon several considerations. To begin with, it is an open secret that the board of public utilities attempts to equalize the assessments at this level. This being true, it would be fairer to all concerned if other property in the state were assessed on the same basis. Furthermore, in the light of all available information, it is most unlikely that the assessor of any county has established a level in excess of this figure. Hence, no reduction in present assessments would be necessary if the proposal were adopted. In fact, we are told by experts in the field of property appraisal that we are likely to succeed in our effort to equalize assessments among the various counties only if the assessment level prescribed by law is placed at some reasonably attainable figure, well below one hundred per cent.

\(^4\) It is well settled that unless the constitution expressly requires assessment at actual value, the legislature may prescribe an assessment level of less than one hundred per cent of actual value. See COOLEY, TAXATION (4th ed. 1924) §§159 and 171, and authorities there cited.
A simple calculation in arithmetic will demonstrate that if property is assessed at sixty-six and two-thirds per cent of its actual value, we can make a fifty per cent increase in the tax rate without violating the constitutional limit. For example, on Class II property worth three thousand dollars we can levy a tax of thirty dollars without exceeding the limit of a dollar on each hundred dollars of value. If the property is assessed at two thousand dollars it takes a tax rate of a dollar and a half on each hundred dollars of assessed value to yield the same thirty dollar tax. But note that the proposal is not for a fifty per cent increase in the total levy but only in the school levy. Even if the privilege to vote a like increase should be extended to municipalities in order to afford them much-needed financial relief, the total tax would still be well within the maximum fixed by the constitution.

One other feature of the proposal deserves comment. The provision for local option on the question of an additional levy for schools is in keeping with the basic philosophy of local autonomy and home rule that so thoroughly pervades the whole Strayer Report. It is possible to provide for majority rule in this connection because the proposed additional levy is not an excess levy within the meaning of the tax limitation amendment. It is contemplated that the normal levy will be laid on the assessed value, which is the practice now followed. In the last example given above this would mean a total tax under all the regular levies of only twenty dollars, leaving within the constitutional limit a potential tax of ten dollars, to be partially utilized or not as the voters of the county may decide. Even if the additional levy is voted, the total tax would still be less than the constitutional maximum of thirty dollars, and it would therefore be necessary to obtain a three-fifths vote which is required by the constitution only in the case of a levy in excess of the maximum.

It is hoped that the legislature may see fit to make available for the support of public education at least this small part of our potential but now unused taxing power. Such action would not in and of itself increase taxes by even one dollar, but would only enable the people of a county to impose an additional tax upon themselves if they desire to provide for their children educational opportunities comparable to those enjoyed by the children of most of the other states. Certainly, the legislature would merit no criticism from any source if it should pass such enabling legislation.

46 W. VA. CONST. art X, §1.