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The Nebraska Constitution And Taxation

Forrest Johnson*

I. INTRODUCTORY HISTORY

A safeguard against taxation without representation was included in the United States Constitution:¹ "All Bills for raising Revenue shall originate in the House of Representatives." That provision insured that matters of taxation would first be considered by the House of Congress which was considered to more directly represent the people. In further recognition of the need for regulation and control of taxation, a short section on this subject was included in Nebraska's first constitution which was formulated in 1866 and which remained in force until 1875. This section provided:²

The Legislature shall provide for an annual tax, sufficient to defray the estimated expenses of the State for each year, and whenever the expenses of any year shall exceed the income, the Legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year.

The basic principles of taxation by valuation and uniformity as to class did not appear in the Nebraska Constitution until 1875.³ The 1875 document contained an interesting provision which apparently was the result of problems arising in a new frontier state undergoing rapid population growth. After reference to the legislative power to levy a tax by valuation, the section states:

[I]t shall have power to tax peddlers, auctioneers, brokers, hawkers, commission merchants, showmen, jugglers, inn-keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests of business, venders of patents, in such manner as it shall direct by general law, uniform as to the class upon which it operates.

This provision did not survive the 1920 revision of the Nebraska Constitution.

Exemptions from taxation first appeared in the Nebraska Con-

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¹ Article 1, § 7, cl. 1.

² NEB. CONST. art. V, § 3 (1866).

³ NEB. CONST. art. IX, § 1 (1875).

stitution of 1875. The broad scope and principles of exemption set forth provided:⁴

The property of the State, counties and municipal corporations, both real and personal, shall be exempt from taxation, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation, but such exemptions shall be only by general law.

With some modification, exemption provisions have been carried forward to the present time. The principal changes since 1875 have been in clarification and addition.

As previously noted, the basic principles of valuation and uniformity were set out in Article IX, section 1 of the Constitution of 1875. Section 2 of this article defined in general terms the properties which should be or might be exempt from taxation. These sections contained the principal items of contention which have necessitated interpretation and implementation by the legislature and taxing officials and which have resulted in the major portion of litigation on subjects of taxation. In matters other than the basic principles noted above, these sections have been changed considerably over the years, largely to reflect the changes in the general areas and procedures of taxation. These changes in concept become clearly visible when amendments over the years are noted.

II. DEVELOPMENT OF MODERN CONSTITUTIONAL TAXATION PROVISIONS

The first significant recognition of changing concepts of taxation after 1875 is found in a proposed amendment submitted to the electors in 1914. This provided:⁵

Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided, in addition to those hereinafter specifically mentioned in section 2 of this article.

Although this proposed amendment did not receive enough support to become law, a majority of those voting on the amendment favored it.

The further recognition of the new concept of taxation is shown by the statement incorporated in section 1 in 1920:⁶ "Taxes, other

⁴NEB. CONST. art. IX, § 2 (1875).

⁵Neb. Laws c. 18, p. 82 (1913).

⁶NEB. CONST. art. VIII, § 1. The subject of revenue was changed from Article IX to Article VIII by the Constitution of 1920.

than property taxes, may be authorized by law." In recent years, most of the states have adopted sales taxes or income taxes or both. In recognition of this trend and because these taxes might at some time be adopted in Nebraska, another amendment was adopted in 1954 which states:⁷

When a general sales tax, or an income tax, or a combination of a general sales tax and income tax, is adopted by the Legislature as a method of raising revenue, the state shall be prohibited from levying a property tax for state purposes.

Prior to 1920, the first clause of section 1 provided:⁸ "The Legislature shall provide such revenue as may be needful, by levying a tax by valuation." The 1920 amendment clarified the legislative power by changing that clause to read:⁹ "The necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the Legislature may direct," and then added requirements of taxation by valuation uniform as to class.

Section 1 of Article VIII has been further enlarged on several occasions. In 1920 a clause was introduced which provided:

[T]axes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, and taxes uniform as to class may be levied by valuation upon all other property.

In 1952 this was supplemented by adding:

[E]xcept that the Legislature may provide for a different method of taxing motor vehicles; *Provided*, that such tax proceeds from motor vehicles taxed in each county shall be allocated to the state, counties, townships, cities, villages, and school districts of such county in the same proportion that the levy of each bears to the total levy of said county on personal tangible property.

Another provision, added to section 1 in 1954, provided:

The Legislature may prescribe standards and methods for the determination of the value of real or other tangible property at uniform and proportionate values.

The most recent amendment to this section, added in 1960, states:

The Legislature may provide that livestock shall constitute a separate and distinct class of property for purposes of taxation and may further provide for reciprocal and proportionate taxation of livestock located in this state for only part of a year.

Thus what in 1920 was a short statement authorizing the levy of taxes by valuation, and requiring uniformity as to the class of property, has evolved into a complex statement with added provisions and two major exceptions to the general rule enunciated.

⁷ NEB. CONST. art. VIII, § 1A.

⁸ NEB. CONST. art. IX, § 1 (1875).

⁹ NEB. CONST. art. VIII, § 1.

Section 2 of Article IX of the Constitution of 1875—subsequently Article VIII of the Constitution of 1920—was subjected to little basic change in 1920 but numerous clarifications were made. An example of this was the change from a positive exemption from taxation of the property of the state, county, and municipal corporations, to the positive exemption of the property of the state and its governmental subdivisions, thereby recognizing the existence of other governmental subdivisions than those originally enumerated. In addition, the permissive exemption of property used exclusively for agricultural and horticultural societies was changed to require that the property be also owned by such societies. It should also be noted that the requirement of ownership by the entity was not added to the permissive exemption of property owned and used exclusively for educational, religious, charitable or cemetery purposes. The fact that an organization is on a non-profit basis is often used as a claim for exemption, but such a claim is not valid unless one or more of the constitutional classifications is also present.¹⁰

An express limitation which was added to section 2 in 1920 as a means of clarification provided that "no property shall be exempt from taxation except as provided in this section." That provision remains in the present section. There was also a new area of exemption added in 1920. This granted that "household goods of the value of two hundred dollars to each family shall be exempt from taxation." The exemption of household goods was changed in 1954 and now reads:

Household goods and personal effects, as defined by law, may be exempted from taxation in whole or in part, as may be provided by general law, and the Legislature may prescribe a formula for the determination of value of household goods and personal effects.

It should be noted that the 1954 amendment made the household goods exemption wholly permissive in conformity with all other exemptions except that concerning state property.

The latest change in the field of tax exemptions was in 1960 when section 2A was added:

The Legislature may establish bonded and licensed warehouses or storage areas for goods, wares and merchandise in transit in the state which are intended for and which are shipped to final destinations outside this state upon leaving such warehouses or storage areas, and may exempt such goods, wares and merchandise from ad valorem taxation while in such storage areas.

As stated above, certain provisions have been added to both sections 1 and 2 authorizing, but not requiring, certain types of

¹⁰Royal Highlanders v. State, 77 Neb. 18, 108 N.W. 183 (1906).

legislation. One of these is the right to provide a different method of taxing motor vehicles. In implementing this provision, the State Board of Equalization and Assessment was directed to meet on the first Monday in March of each year to fix the valuations of the several classes of motor vehicles for motor vehicle tax purposes.¹¹ This resulted in an administrative problem due to the fact that the values of motor vehicles not yet in production had to be set for the ensuing year. This problem was corrected in 1959 by requiring the Tax Commissioner to prepare a schedule of actual values, for approval by the State Board of Equalization and Assessment, of the several types of motor vehicles already manufactured or being manufactured.¹² The legislature provided that as new makes and models became available the Tax Commissioner should prepare and certify a schedule of values of these vehicles in the same manner as the schedule approved for vehicles already manufactured.¹³

Several bills to implement the 1960 amendment as to valuation and assessment of livestock were submitted to the 1961 Legislature. Also proposed to the Legislature was a bill to implement the provisions of section 2A concerning the exemption of goods in transit.¹⁴ On the other hand, since the 1954 amendment concerning the exemption of household goods and personal effects, the Legislature has not passed any legislation exempting such property although several bills have been introduced for that purpose.

The field of constitutional provisions relative to the subject of taxation is so broad and complex that it can be covered in only a limited manner in this article. In order to provide at least some detail only sections 1 and 2 of Article VIII of the Nebraska Constitution are discussed. However, this does not, nor is there an intention to, minimize the importance of the other sections of this Article.

III. NEBRASKA CASE LAW

Many cases have been before the Nebraska Supreme Court for a determination of the constitutionality of various legislative acts concerning taxation. An excellent analysis of the cases involving the subject of tax exemptions is included in a recent comprehensive article.¹⁵

¹¹ Neb. Laws c. 268, p. 882 (1953).

¹² NEB. REV. STAT. § 77-1239 (Supp. 1959).

¹³ NEB. REV. STAT. § 77-1239.02 (Supp. 1959).

¹⁴ L.B. 500, 72d Sess., Neb. Leg. (1961).

¹⁵ Petrie & Langenheim, *Tax Exempt Property In Nebraska*, 39 NEB. L. REV. 676 (1960).

There has also been a considerable amount of litigation involving the matters of uniformity and equality. Although a detailed analysis of such cases is not herein attempted, a few representative cases are cited. In *LeDioyt v. County of Keith*,¹⁶ the owners of houses of a certain construction complained of a lack of uniformity in valuation when compared with houses differently constructed. The court said that substantial compliance with the requirement of equality and uniformity was all that was required. In addition, the court said that the taxpayer must show the valuation to be arbitrary and not made in good faith in order to have the valuation set aside under a claim of inequality and discrimination.

Another typical case which involved the problem of uniformity was *Omaha Nat'l Bank v. Heintze*,¹⁷ although the action concerned uniformity of rate rather than uniformity of valuation. The plaintiffs challenged a statute which permitted taxation of bank stock at a different rate than other similar intangible property. The court held that the statute in question was unconstitutional because of the lack of uniformity required by Article VIII, section 1 of the Nebraska Constitution. This case also traces the legislative history of intangible property taxation in Nebraska.

Still another area of litigation in which a legislative act was declared unconstitutional because not uniform and proportionate was involved in *Peterson v. Hancock*.¹⁸ This case involved a blanket tax levy on all elementary school districts within a county. However, the effect of the distribution of the fund created by the tax was to require school districts with less than five pupils to pay the blanket levy on their property for the sole benefit of districts with more than five pupils. In finding the challenged statutes discriminatory, the court noted that although equality of tax assessments is necessary, equality in the distribution of tax proceeds is not required "provided the purpose be for the *public welfare of the whole taxing district*."¹⁹

The most recent case in which discussion of uniformity of levying taxes was involved was *Creigh v. Larsen*.²⁰ The case involved an act of the legislature imposing penalties for failure to return intangible property for taxation. The size of the penalty was de-

¹⁶ 161 Neb. 615, 74 N.W.2d 455 (1956).

¹⁷ 159 Neb. 520, 67 N.W.2d 753 (1954).

¹⁸ 155 Neb. 801, 54 N.W.2d 85 (1952).

¹⁹ *Id.* at 814, 54 N.W.2d at 93 (Emphasis by the court).

²⁰ 171 Neb. 317, 106 N.W.2d 187 (1960).

pendent upon the tax rate for tangible property set by the preceding levy. The court held that the imposition of such a penalty was not part of the tax assessment and therefore Article VIII, section 1, was not applicable. However, the act was held unconstitutional because it was discriminatory between members of a class²¹ and because it was non-uniform in its operation.²² The grounds on which the act was struck down are commonly considered in conjunction with the constitutional article specifically concerning taxation.

IV. CONCLUSION

If a constitutional convention is called in Nebraska, the subject of taxation would constitute one of the most difficult and controversial areas of deliberation for the delegates. Before considering any specific sections on taxation, it would be necessary for the members of the convention to decide on one of two courses. The proposals could be drafted so as to be broad in scope and basic in nature referring to a few specific objects of taxation, or the article could be drawn to include detailed and restrictive sections providing a specific guide to taxation in the constitution.

If the first course is adopted, it would be up to the legislature to implement the policies set out in the constitution. If the second course is followed, some problems of interpretation might be avoided.

Following the determination of the course to follow, the delegates would next be confronted with the task of deciding which of the present provisions concerning taxation should be amplified, modified, or eliminated and what provisions, if any, should be added. These decisions would probably be the most closely watched of all the actions of the convention.

²¹ NEB. CONST. art. I, § 25.

²² NEB. CONST. art. III, § 18.