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## RES NOVA IN ILLINOIS LAND USE PLANNING

JAMES E. STARRS

**T**HE war against urban blight can never assume the stature of a sweeping offensive until the stockpiling of legal weapons quickens its pace. This work is but one attempt to equalize the disproportion between the development of urban blight and the evolution of new legal controls to meet it.

The power to tax, Chief Justice John Marshall once said,<sup>1</sup> is the power to destroy. Indisputably, then, the power to tax is also the power to control and to direct. In recognition of this truism, some city planners and others<sup>2</sup> have advised that the authority of a municipal corporation to tax property should be used as one feature in the total complex, and sometimes occult, network of land use planning. However, no data has yet been disclosed to indicate that a program of property tax relief for individual homeowners has been initiated in any area in the nation which is undergoing urban renewal activities. Consequently, our elucidation of this matter will be without precedent in or analogy to any other jurisdiction, including other locations in this state.

The fundamental purpose in employing the taxation power in land use planning is twofold. Principally, it is directed to encouraging and stimulating landowners to improve and maintain their property in the hope of receiving a tax concession in return for their diligent efforts. But at the same time, however, a certain measure of control may be expected to accrue to the local taxing authority with respect not only to the fact of property rehabilitation but also to the manner in which it is to be achieved. It is in this latter connection that this technique becomes significant in a system of controls over land use.

<sup>1</sup> *McCulloch v. Maryland*, 17 U.S. 316 (1819).

<sup>2</sup> *REHABILITATION AND CONSERVATION ASPECTS OF URBAN RENEWAL 31*, (Proceedings of the 4th Working Conference on Problems in Urban Renewal, April 5-8, 1959) (edited by Brussat).

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But it remains to be seen, in the ensuing sections, what technique can, in conformity with the legal principles governing and restrictions upon the power of taxation, best act as an incentive to spur landowners to renovate their property.

#### A. GENERAL PRINCIPLES OF TAXATION

Taxation may be defined as the power by which the sovereign raises revenue to defray the necessary costs of government. By taxation the expenses of operating the machinery of government are apportioned among those who in some measure are privileged to enjoy its benefits and, in return, must bear its burdens. In the last analysis, the power of taxation is a method of providing sufficient funds with which to promote the general welfare of the citizens.

Taxation may be distinguished from the police power and the power of eminent domain, which are co-existent but distinct powers of government. The exercise of the police power is limited by its relation to the public health, welfare and safety, which it seeks to regulate, but the power of taxation depends, in large but not exclusive measure, for its justification upon the public purpose it subserves. However, the power of eminent domain, like the power to tax, may be asserted only when in the public interest and, then, only after the payment of just compensation. The analogy between the powers of eminent domain and taxation is yet more exact since "what is a public purpose, for which property may be taken by a municipality under the power of eminent domain, as well as what is a public purpose for which a municipality may spend its money or incur indebtedness. . . ."<sup>3</sup> are identical.

Although there are various classes of taxes, i.e., capitation, excise and property taxes, only the property tax is relevant to our present inquiry for it is by the manipulation of this tax that government can, in a limited way, control the use of land by its citizens. Pursuant to the dictate of the Illinois Constitution,<sup>4</sup> property taxes are computed on an ad valorem basis. Moreover, property taxes may be further characterized by the means used to raise them. Thus, government may tax property by general taxation, special taxation or special assessment. General taxation is the customary annual tax imposed upon all property within a taxing district to provide revenue for the usual and ordi-

<sup>3</sup> 16 McQUILLIN, MUNICIPAL CORPORATIONS 104 (3d. ed. 1950).

<sup>4</sup> ILL. CONST. art. IX, § 1.

nary day-to-day expenses of the government. By it the government secures the general welfare of all its citizens without conferring a special benefit on any select group of them. But a special tax or special assessment, the terms are roughly equivalent,<sup>5</sup> is levied upon a particular portion of the community whose property has been enhanced by a local improvement. Unlike the general tax, a special tax or assessment is intended for the direct benefit of those who contribute to it. In Illinois, furthermore, a special tax or assessment need not meet the constitutional requirement of uniformity and equality which controls the imposition of a general tax.<sup>6</sup>

The power to tax may be further delimited by the governmental unit which levies it. Only the state itself has an inherent power to tax, limited only by express constitutional restrictions. Subdivisions of the state, i.e., municipal and quasi-municipal corporations, are creatures of delegated authority only, which are controlled not only by the Illinois and Federal Constitutions but also by the terms of the grant from the state. In general, absent constitutional restrictions, a state's "power of taxation is regarded as unlimited, plenary, comprehensive and supreme; the principal check upon its abuse resting in the responsibility of the members of the legislature to their constituents."<sup>7</sup> But subordinate governmental instrumentalities take their powers to tax from the revenue article of the Illinois Constitution<sup>8</sup> and the legislation enacted by the General Assembly<sup>9</sup> in implementing these non-self-executing provisions.

The practical administration of taxation involves a variety of procedures which can be conveniently subsumed under two phases, i.e., the levy and the collection of taxes. In more detail, the stages preliminary to the collection of a tax are the budget which indicates the fiscal needs; the appropriation which stipulates the purpose of the expenditures; the assessment which adjusts the share to be contributed by the property involved; and the levy which declares the rate and amount of the tax. Although each of these stages has its own distinct characteristics, all have one feature in common, i.e., the requirement of itemization. By itemization is meant the delineation, in separate categories, of the varied purposes for which expenditures are necessary. Thus, for

<sup>5</sup> Illinois Cent. R.R. v. City of Decatur, 126 Ill. 92, 18 N.E. 315 (1888).

<sup>6</sup> ILL. CONSTITUTION Article IX, section 9.

<sup>7</sup> 51 Am. Jur. 67-68.

<sup>8</sup> Article IX.

<sup>9</sup> Mainly in the Municipal Code, ILL. REV. STAT., ch. 24 (1961).

example, to say that a certain sum is required for the "alteration and rehabilitation of the old Criminal Courts building, including equipment and furnishings"<sup>10</sup> is improper since it is impossible to determine whether this contemplates the renovation of old equipment or the purchase of new equipment. However, itemization does not require the specification of every item which a municipality intends to pay out, but a single general purpose may suffice "to include every expenditure required for that purpose, although there may be many items."<sup>11</sup> The cardinal principle is that the taxpayer has a right to be informed of the exact purpose to which his money is to be devoted so that he may elect, if he wishes, to challenge any item of the appropriation.

#### B. EXAMINATION OF ALTERNATIVES

In the main, the suggested alternatives for acquiring land use control through the power of property taxation have centered about those phases of the taxation process preceding collection. Thus, the gamut of recommendations runs from reducing the assessed value of real estate, or altering the rate of taxation, or abating the tax amount actually levied to imposing a freeze or temporary exemption from taxation on certain property. All of these tax concessions would be contingent upon the landowner's agreement to improve his property or his actually having done so.

In evaluating the constitutional validity of these methods of tax abatement it is essential, at the outset, to recognize that the central constitutional provision in Illinois regulating the adoption and operation of any tax is that it must be uniform and equal. In the words of the Illinois Constitution, "the General Assembly 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. . . ."<sup>12</sup> This limitation is also enforced by the equal protection clause of the Fourteenth Amendment to the Federal Constitution.<sup>13</sup> Basically, the principle of uniformity strives to effect a just distribution of the tax burdens among the persons who stand to benefit from the operations of the government imposing the tax.

<sup>10</sup> *People v. Advance Heating Co.*, 376 Ill. 158, 166, 33 N.E. 2d 206, 211 (1941).

<sup>11</sup> *People v. Sage*, 375 Ill. 411, 419, 31 N.E. 2d 791, 795 (1941).

<sup>12</sup> Article IX, § 1. See also Article IX, § § 9 and 10; Article IV, § 34 and ILL. REV. STAT. ch. 24, § 8-3-5 (1961).

<sup>13</sup> *Hanover Fire Ins. Co. v. Carr*, 72 U.S. 494 (1926).

The Illinois courts, in interpreting the concept of uniformity, have consistently adhered to the important qualification that uniformity or equality is to be determined by the impact of the tax throughout the political unit by or with respect to which the tax is levied.<sup>14</sup> This means, for example, that a tax for state purposes must be uniform throughout the state and that a tax for a county purpose must be equal in the county. Thus, taxes imposed by local subdivisions need not be on a parity with taxes imposed by other similar subdivisions in the state as long as there is uniformity and equality within each individual taxing district, i.e., city, county, town, etc.

Therefore, if an act levying a school fund tax throughout the state exempts districts where there is no high school, even though the residents of that district use the high schools of adjoining districts, not only is the uniformity principle of Article IX, section 1, of the Illinois Constitution violated but so too is Article IX, section 6,<sup>15</sup> of that constitution. Moreover, uniformity is also offended when a tax reduction or other concession less than complete remission is involved. For that reason, a statute providing for the installment payment of delinquent taxes on realty in counties containing 500,000 or more inhabitants and for waiver of interest, forfeitures, delinquencies, and penalties is unconstitutional as providing for non-uniform taxation.<sup>16</sup>

Uniformity is so much the dominating factor in any tax revenue system in Illinois that it will even control in a situation infected by an unlawful assessment of property. Therefore, if property throughout the state is uniformly assessed at 37% of its fair market value, then, notwithstanding that all property should be assessed at its full fair cash value, and in failing to do so the assessors are violating their official duties, the Illinois courts will invalidate for inequality a tax on one individual at 60% of the fair market value of his property.<sup>17</sup> Other decisions have held to the same effect.<sup>18</sup> However, even though in substance an overvaluation may result in a lack of uniformity, still, relief may be denied for, procedurally, the Illinois courts require evidence that "the valuation has been made fraudulently . . . or overvalued so

<sup>14</sup> *The Hub v. Hanberg*, 211 Ill. 43, 71 N.E. 826 (1904).

<sup>15</sup> *Board of Education v. Haworth*, 274 Ill. 538, 113 N.E. 939 (1916).

<sup>16</sup> *People v. Jarecki*, 363 Ill. 180, 1 N.E. 2d 855 (1936).

<sup>17</sup> *People v. Illinois Central R.R.*, 355 Ill. 605, 190 N.E. 82 (1934).

<sup>18</sup> *People v. Chicago, B. & Q. R. Co.*, 300 Ill. 399, 133 N.E. 325 (1921); *In Re Chicago Rys. Co.*, 175 F. 2d 282 (7th Cir. 1949).

excessively that under the circumstances it amounts to constructive fraud. . . ."<sup>19</sup> Moreover, uniformity is as equally applicable to the rate of taxation as to the mode of assessment.<sup>20</sup>

However, on a number of occasions, the Illinois Supreme Court has upheld statutes which, on their face, did not conform to the constitutional requirement of uniformity and equality. In *Schreiber v. Cook County*,<sup>21</sup> for instance, a statute (popularly known as the Scavenger Act) extinguishing the tax lien on delinquent property following a tax sale was challenged as involving inequality and, in fact, unjust discrimination to the advantage of those who neglected to pay their taxes. After remarking that there is a substantial legal distinction between an extinguishment of a tax lien on a judicial sale and the remission or discharge by direct legislation, the court declared that perfect equality of taxation is an impossible and impractical goal. Indeed, the court reasoned, "inequalities that result *occasionally and incidentally* in the application of a system that is not arbitrary in its classification, and not applied in a hostile or discriminatory manner, are not sufficient to defeat the tax."<sup>22</sup>

Other cases<sup>23</sup> have also revealed a patent, but valid, lack of uniformity in taxation. Thus, where a budget or appropriation ordinance includes as debits abatements for uncollectible taxes and the taxes on property to be forfeited for tax delinquencies and, as a consequence, requires an increase in the tax levy to compensate for these items, the courts have refused to vitiate this procedure for three reasons. First, the items are merely for the purpose of balancing the budget. Second, the only taxes to be abated are those which are uncollectible after genuine efforts have been made to obtain their payment. Third, these loss and cost allowances are not for monies to be expended but are merely estimates of taxes that will not be received. If, however, no bona fide attempt to collect the taxes had preceded their inclusion among other items of loss and cost in the budget or appropriation ordinance, then, to permit such a practice would be to approve the

<sup>19</sup> *People v. Hendrickson Pontiac*, 12 Ill. 2d 477, 479-80, 147 N.E. 2d 29, 30 (1957).

<sup>20</sup> *Giebelhausen v. Daley*, 407 Ill. 25, 95 N.E. 2d 84 (1950).

<sup>21</sup> 388 Ill. 297, 58 N.E. 2d 40 (1944).

<sup>22</sup> *Id.* at 303, 58 N.E. 2d at 43 (Emphasis added).

<sup>23</sup> *People v. 1500 Lake Shore Drive Bldg. Corp.*, 376 Ill. 301, 33 N.E. 2d 455 (1941); *People v. Sage*, 375 Ill. 411, 31 N.E. 2d 791 (1941); *People v. Advance Heating Co.*, 376 Ill. 158, 33 N.E. 2d 206 (1941).

absolute abnegation of the constitutional requirement of uniformity, a result not to be condoned.<sup>24</sup>

The power of a municipality to tax does not, by necessary implication, include the power to remit or compromise taxes since such local governmental units are creatures of delegated authority only<sup>25</sup> and because a tax, not being predicated upon a contract, cannot be discharged by reason of contractual considerations. Furthermore, by dint of the terms of the Illinois Constitution itself,<sup>26</sup> a state may not commute or release a local tax since the state must "require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform. . . ." Thus, an act of the General Assembly purporting to exempt foreign insurance companies from liability to personal property taxes is in direct opposition to this Illinois constitutional provision.<sup>27</sup>

In addition, another provision of the Illinois Constitution removes from the General Assembly the "power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual . . . to any municipal corporation therein."<sup>28</sup> As a natural concomitant to this prohibition, it would seem reasonable that what the General Assembly cannot do, it cannot authorize a municipality to do; but, in one of the few decisions<sup>29</sup> construing this section of the Illinois Constitution, the court permitted the City of Chicago to release the indebtedness of a railroad corporation in return for its voluntary undertaking to elevate its tracks. In answering the assertion that such conduct plainly offended Article IV, section 23, of the Illinois Constitution, the court said that the limitation of that provision "would not prohibit a city council from giving up a liability in consideration for something which was deemed of equal or greater value."<sup>30</sup> However, the dearth of other authority relating to a municipality's power to release a tax obligation in view of Article IV, section 23, seems to mitigate the controlling effect of the broad statement in

<sup>24</sup> *People v. Chicago, M., St. P. & P. R.R.*, 354 Ill. 438, 188 N.E. 404 (1933).

<sup>25</sup> 38 Am. Jur. 77, § 388; 16 *McQuillin, Municipal Corporations* 343 (3d ed. 1950); *People v. Kimmel*, 323 Ill. 261, 154 N.E. 97 (1926); see annotations in 99 A.L.R. 1062 (1935) and 28 A.L.R. 2d 1425 (1953).

<sup>26</sup> Article IX, § 10.

<sup>27</sup> *Raymond v. Hartford Fire Ins. Co.*, 196 Ill. 329, 63 N.E. 745 (1902).

<sup>28</sup> Article IV, § 23.

<sup>29</sup> *City of Chicago v. Pittsburgh, C. C. & St. L. Ry.*, 244 Ill. 220, 91 N.E. 422 (1910).

<sup>30</sup> *Id.* at 231, 91 N.E. at 422.

that decision. Moreover, any endeavor by a municipality to release or remit taxes must meet the challenge of the constitutional concept of uniformity.

In sum, the foregoing elucidation of the relevant constitutional provisions controlling taxation on the local level and the decisions interpreting these requirements would militate strongly against the implementation of a tax abatement mechanism to induce landowners to renovate their property. A device of such a nature would be in serious jeopardy immediately upon its inception for, if the concept of uniformity alone would not place an impenetrable barrier in the way of its effectuation, then other constitutional and statutory provisions,<sup>31</sup> the scope of which has not yet been fully delineated, which preclude the remission or discharge of debts due to a municipality and exemption from taxation, as well as the very nature of a municipality as an instrument of delegated authority only, would, in combination, go far to make the success of such a scheme highly dubious.

Although it may be conceded that tax abatement procedures are not the most appropriate device for land use control, that is not to say that no other suitable alternative is available. In fact, the very recent decision of the Illinois Supreme Court in *Board of Library Directors v. City of Lake Forest*<sup>32</sup> has opened the way to a solution of this dilemma. In that case, the General Assembly had passed legislation to ameliorate the excessive tax burdens on the citizens of a township. Prior to this enactment, the inhabitants of a city, which was partially within and partially outside a township, who were citizens of the township were being assessed by the township for a township library and by the city for a city library, located outside the limits of the township. Under this legislation, the proceeds of the township library tax derived from this city were distributed to the city, which thereafter abated its library tax on its citizens to that extent. The ultimate result was that the inhabitants of the city who were also citizens of the township were taxed to support one library only.

However, the directors of the township library objected that this was a violation of the uniformity required by the Illinois Constitution. The court agreed but added that "while the uniformity of levy and assessment is the inexorable command of the Illinois Constitution, this same standard of uniformity is not generally held to be applicable to

<sup>31</sup> ILL. CONST. art. IV, § 23; ILL. REV. STAT., ch. 24, § 8-3-5 (1961).

<sup>32</sup> 17 Ill. 2d 277, 161 N.E. 2d 272 (1959).

the disposition of the tax after collection.”<sup>33</sup> The disbursement of tax proceeds, the court continued, “is limited by the admonition that the proceeds of the tax must be used for the ‘corporate purposes’ of the municipality levying the tax.”<sup>34</sup> On this rationale, the court sustained the challenged distribution of the tax.

With this decision in mind, it becomes possible to formulate a plan of action and to test its legality against the pertinent statutes and decisions. Instead, therefore, of reducing a tax before it is collected, why will not a rebate or refund achieve the same purpose but without running afoul of the constitutional limitation of uniformity. Concededly, a system of rebates, on the authority of the *Board of Library Directors* decision, would be an acceptable method of avoiding the impact of the uniformity rule, but it remains to be seen whether such a disposition of tax funds is within the legitimate scope of a corporate purpose.

The power of taxation cannot be exercised for other than corporate purposes. This is the inflexible command of the Illinois Constitution<sup>35</sup> and the statutes<sup>36</sup> in execution of the authority granted by it. As defined by an early Illinois decision,<sup>37</sup> a corporate purpose embraces any expenditure of tax revenue “in a manner which will promote the general prosperity and welfare of the municipality that levies it.” Later decisions have not substantially modified the tenor of this definition but have attempted to give it greater specificity. Thus, in *Board of Supervisors of Livingston County v. Wieder*,<sup>38</sup> the true doctrine of what is a corporate purpose was said to be “such only, as are germane to the objects of the creation of the municipality, at least such as have a legitimate connection with these objects, and a manifest relation thereto.” Other decisions<sup>39</sup> of the Illinois Supreme Court have consistently adhered to this interpretation of corporate purposes. However, in *Board of Library Directors v. City of Lake Forest*,<sup>40</sup> the court refused to limit the term to a narrow or rigid construction and, in fact,

<sup>33</sup> *Id.* at 282, 161 N.E. 2d at 276.

<sup>34</sup> *Id.* at 283, 161 N.E. 2d at 276.

<sup>35</sup> ILL. CONST. art. IX, § 9; art. IV, § 34.

<sup>36</sup> ILL. REV. STAT., ch. 24, § 8-3-1 (1961).

<sup>37</sup> *Taylor v. Thompson*, 42 Ill. 8 (1866).

<sup>38</sup> 64 Ill. 427 (1872).

<sup>39</sup> *People v. Fleetwood*, 413 Ill. 530, 109 N.E. 2d 741 (1952); *Wetherell v. Devine*, 116 Ill. 631, 6 N.E. 24 (1886).

<sup>40</sup> 17 Ill. 2d 276, 161 N.E. 2d 272, 276 (1959).

reinstated and approved the general language of *Taylor v. Thompson*<sup>41</sup> to justify the disposition of tax funds by a township in support of a city library outside the confines of the township. This decision indicates, most conclusively, that a direct benefit need not inure to the taxpaying public in order to characterize the distribution as for a corporate purpose.

These authorities alone would tempt one to conclude that an expenditure of tax funds as rebates to property owners who agree to improve their property in accord with an urban renewal plan would assuredly be in the interest of a legitimate corporate objective. However, a number of decisions, which seem to require that all disbursements, to be for a corporate purpose, must be in payment of a legally enforceable debt of the municipality, casts doubt upon this proposition.

A municipal corporation cannot use tax monies to pay a gratuity to a private individual or private corporation. To do so would clearly not be for a corporate purpose. Yet, is it equally true that only that distribution of tax funds is for a corporate purpose which is in payment of a corporate debt? Certainly the taxpayers of the city in *Board of Library Directors v. City of Lake Forest*<sup>42</sup> had no legally enforceable claim against the revenue of the township; nor had the General Assembly sought to discharge any debt by legislation. Yet, although there was no debt there, neither was the payment a gift or gratuity.

So too in *People v. Bunge Bros. Coal Co.*,<sup>43</sup> an appropriation and levy of tax funds for dues to the Illinois Municipal League and the United States Conference of Mayors was held to be for a corporate purpose, although, it goes without saying, that there was no enforceable debt for which the dues were a payment. It would seem, therefore, that the essence of the term "corporate purpose" is that for every expenditure of tax revenue there must be some perceptible *quid pro quo* redounding to the general welfare and prosperity of the public within the taxing unit.

On this analysis, the use of tax funds to provide pensions for public servants retiring in the future would effectuate a legitimate corporate objective, i.e.,

by encouraging competent and faithful employees to remain in the service and refrain from embarking on other vocations; and, second, by retiring from the

<sup>41</sup> 42 Ill. 8 (1866).

<sup>42</sup> 17 Ill. 2d 277, 161 N.E. 2d 272 (1959).

<sup>43</sup> 392 Ill. 153, 64 N.E. 2d 365 (1945).

public service those who, by devoting their best energies for a long period of years to the performance of duties in a public office or employment, have for that reason, or because of advanced age, become incapacitated from performing the duties as well as they might be performed by others more youthful or in greater physical or mental vigor.<sup>44</sup>

But if provision is made for the payment of a pension to employees of a municipality who are already retired, such a disbursement of tax funds would not be for a corporate purpose.<sup>45</sup> The same reasoning would seem to be applicable to bonuses for servicemen under the Soldiers' Compensation Act. Yet, that act was upheld in *Hagler v. Small*<sup>46</sup> despite the close analogy between retired municipal employees and discharged servicemen. Apparently the fact that the validity of a state's disposition of tax revenue is determined by the *public purpose* motivating it, whereas a municipality must collect taxes for *corporate purposes* was the differentiating factor between these decisions, absent, of course, any extra-legal considerations.

In yet another group of cases, however, the Illinois courts have more closely distinguished between expenditures which were donations and those which were in payment of legally enforceable debts. Thus, in *Berman v. Board of Education of City of Chicago*,<sup>47</sup> the Illinois Supreme Court enjoined the issuance of bonds, under an act of the General Assembly, by the Board of Education of Chicago to pay tax anticipation warrants where the taxes anticipated had not been collected. The main thrust of the opinion was that "tax anticipation warrants are not debts and do not represent direct legal obligations of the municipality issuing them. It follows that an appropriation and levy for their payment must fail, since not for a corporate purpose."<sup>48</sup> Later decisions,<sup>49</sup> on the issue of tax anticipation warrants, have adopted the reasoning and conclusion of the *Berman* opinion.

Notwithstanding, only a modicum of controlling weight should be accorded these decisions since they stand, in point of time, between a number of opinions which have affirmatively established that some-

<sup>44</sup> *Porter v. Loehr*, 332 Ill. 353, 359, 163 N.E. 689, 691 (1928).

<sup>45</sup> *Porter v. Loehr*, 332 Ill. 353, 163 N.E. 689 (1928). See also *People v. Abbott*, 274 Ill. 380, 113 N.E. 696 (1916).

<sup>46</sup> 307 Ill. 460, 138 N.E. 849 (1923).

<sup>47</sup> 360 Ill. 535, 196 N.E. 464 (1935).

<sup>48</sup> *Berman v. Board of Education of City of Chicago*, 360 Ill. 535, 542, 196 N.E. 464, 467 (1935).

<sup>49</sup> *Leviton v. Board of Education of City of Chicago*, 374 Ill. 594, 30 N.E. 2d 497 (1940); *Dimond v. Commissioner of Highways*, 366 Ill. 503, 9 N.E. 2d 197 (1937).

thing less than a legally enforceable debt will suffice to constitute a corporate purpose, for the payment of which tax funds may be allocated. In addition, the temper of the times in which the *Berman* case and its aftermath occurred might explicate, to some extent, those holdings.

In any event, the possibility exists that a tax plan for any particular urban renewal area may be devised in congruity with both the narrow line of the *Berman* case and the more liberal attitude of opinions like *Board of Library Directors v. City of Lake Forest*. Thus, the distribution of the tax funds appropriated to this purpose could be predicated upon a contractual agreement between the governmental instrumentality directing urban renewal projects and the property owner that in consideration of the payment of a fixed percentage of the costs of the contemplated improvements, the property owner agrees to accomplish the renovations according to the reasoned judgment of a reputable panel of architectural experts selected by the governmental agency. In this way, a binding obligation, in the sense of the transfer of a *quid pro quo*, would be created, the satisfaction of which would be a corporate purpose.

However, the dilemma is not yet resolved. A corporate purpose, it has been seen, must possess some ascertainable nexus with or be germane to legitimate objectives of the municipality. Yet, a municipality, as an instrument of delegated powers, can only perform those functions which have been granted to it by the General Assembly or which are reasonably inferable from them.<sup>50</sup> Furthermore, in viewing the concept of public or corporate purpose, the Illinois Supreme Court has taken pains to disaffirm any suggestion that the term is a static concept. On the contrary, it is evolutive, "flexible, and is capable of expansion to meet conditions of a complex society that were not within the contemplation of the framers of our constitution."<sup>51</sup>

Consequently, the power of a municipality to regulate the use of streets, to regulate fire hazards and to control local transportation problems warrants, without an additional express grant from the General Assembly, an appropriation for the consolidation of passenger and freight terminals.<sup>52</sup> So too the power to eliminate slum areas includes,

<sup>50</sup> *People v. Rice*, 356 Ill. 373, 190 N.E. 681 (1934).

<sup>51</sup> *People v. Chicago Railroad Terminal Authority*, 14 Ill. 2d 230, 236, 151 N.E. 2d 311, 314 (1958).

<sup>52</sup> *People v. Fleetwood*, 413 Ill. 530, 109 N.E. 2d 741 (1952).

by necessary implication, the authority to pass an ordinance issuing slum clearance bonds and to levy taxes to pay for them.<sup>53</sup>

Is there any doubt, then, that, within the express terms of the Urban Community Conservation Act,<sup>54</sup> there inheres sufficient legislative warrant for the appropriation of tax revenues to aid landowners in a land conservation project area in the rehabilitation of their residences. Even the language of the Urban Community Conservation Act itself preponderates in favor of this proposition, i.e.,

(c) For the purpose of aiding in the planning, undertaking or carrying out of a Conservation Plan of Conservation Board hereunder, a municipality may (in addition to its other powers and upon such terms with or without . . . consideration . . . as it may determine) do and perform any or all of the actions or things which, by the provisions of subsection(a) of this section, a public body is authorized to do or perform, including the *furnishing of financial and other assistance*.<sup>55</sup>

In conclusion, one other measure should be succinctly mentioned and, with equal brevity, discounted as impractical. Our discussion, thus far, has concerned general taxation, which applies to all property within a taxing unit. It is also conceivable that a special assessment could be levied on property throughout any urban renewal area to pay for rebates to those who agree to improve their property as directed. To justify such an imposition, such property renovations must have a more direct benefit upon the property assessed to pay for contributions to them than in the case of general taxation. In addition, these improvements must fit within the legal meaning of "local improvements." But aside from the legal issue, special assessments are, of their very nature, a "one-time" affair, i.e., installation of sewers, roads, etc., but property rehabilitation is a continuing process, which would require continuing special assessments. Human nature is not such as to brook such interminable assessments for, what basically is, the same purpose.

#### CONCLUSION

Without cavil or compromise, it can be asserted, on the basis of the preceding analysis, that the land use planning involved in urban renewal can be forwarded, in complete consonance with relevant legislative and judicial authorities and constitutional principles in Illinois, through the expenditure of property tax revenues to stimulate or

<sup>53</sup> *People v. City of Chicago*, 394 Ill. 477, 68 N.E. 2d 761 (1946).

<sup>54</sup> ILL. REV. STAT., ch. 67 1/2 §§ 91.8-91.16 (1961).

<sup>55</sup> ILL. REV. STAT., ch. 67 1/2, § 91.14a (c) (1959) (Emphasis added).

revivify the efforts of property owners in the care and management of their property. The particular blessing of this suggestion, which is sorely lacking in others with the same objective, is that it may prevent the re-entry of many blight producing factors once an urban renewal project has been completed. Much of our present thinking in urban planning still gravitates to short term gains, i.e., a housing project or renewal of a particular area with a transfer of enthusiasm after the project's completion to a new locus of trouble. The fallacy in this thinking rests with the assumption that any urban renewal is ever a *fait accompli*. Under the proposed plan, urban renewal is recognized to be the continuing responsibility of the community, first to cure the existing incidence of blight and then to insure against the probability of its return by a mechanism suitable for operation on a long term basis.

So that there may be no misunderstanding about the nature or method of this plan, thoroughness dictates that one other challenge to this proposal be answered and that the means of its implementation be briefly outlined. A reputable authority<sup>56</sup> has asserted that a plan of this nature is discriminatory to those who maintain their property without the necessity of such artificial encouragement or incentive. This is not so, because these more responsible property owners will, indirectly, benefit from this program by increasing the value of their property in proportion to the effectiveness of the proposal upon the owners of contiguous property. In addition, where a neighborhood shows more than incipient signs of decay and blight, the owners who would otherwise maintain their property are discouraged from doing so by the seeming over-all futility of their acts. Thus, an incentive program of this nature will, in the long run, impel some to rehabilitate their properties who, but for this measure, would not do so and will, as a corollary, give greater impetus and determination to the efforts of those who are not in such dire need of the dollar support this plan entails.

And finally, to insure the smooth and consistent operation of this plan, one must be mindful of the following points. The budget and appropriation ordinance should include an item, in sufficient detail to apprise the taxpayers of its exact nature and purpose, for monies to be disbursed to the urban renewal agency for eventual refunding to

<sup>56</sup> Slayton, STATE AND LOCAL INCENTIVES AND TECHNIQUES FOR URBAN RENEWAL, 25 LAW & CONTEMP. PROB. 793, 799, 801 (1960).

landowners on the following terms, at the least. Landowners may receive a rebate in varying amounts up to a fixed maximum percentage of the anticipated cost of the improvements. Rebate amounts should be determined by the cost of improvements rather than the amount of property taxes paid in order to obviate the charge that this system is merely an evasion of the constitutionally impermissible tax abatement method of controlling land use. In return for the payment, the landowner should be required to agree to submit both costs and plans for approval to the urban renewal agency. In addition, it may be desirable to introduce into this agreement between property owner and agency as many covenants running with the land which the practicalities of the situation may permit. In sum, the manifest intent should be to distribute funds in consideration of the landowners' surrender of certain rights to control the character of the improvement to his property.