Classification of Real Property for Tax Purposes in Illinois - Hoffmann v. Clark

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Real property taxes traditionally have been levied to raise revenue for local government by taxing all real estate uniformly. Uniform taxation is achieved by applying a single tax rate to the property's fair market value regardless of the property's use. In enacting real property taxes for revenue purposes, legislatures have attempted to impose an equal tax burden on each taxpayer to avoid influencing private sector decision-making. Accordingly, the ideal property tax has been neutral in its impact. Moreover, to insure an equitable tax, each taxpayer was to receive benefits proportionate to the tax liability incurred. Recently, however, real property taxation has been employed to achieve non-revenue goals such as subsidizing selected taxpayers by shifting their tax burden to others and influencing private sector decision-making by decreasing the tax burden on property used for socially desirable purposes. Thus, in contrast to the traditional method of taxing property at a uniform tax rate applied to its fair market value, this new taxation scheme is purposely non-neutral. In attempting to achieve these non-revenue goals, legislatures have first classified the real estate and then levied a tax non-uniformly by property class.

1. Fair market value is the price a willing buyer would pay for the property to a willing seller. \textit{Black's Law Dictionary} 716 (rev. 4th ed. 1968).


3. W. Attoe, T. Heller & J. Morgan, \textit{Taxation and Land Use: A Search for Goals} 2 (1974) [hereinafter cited as ATTOE]. See BENSON, \textit{supra} note 2, at 32-34. By the beginning of the nineteenth century, the idea of equality of taxation had become a basic principle. Equality of taxation was viewed as the means to distribute the burdens of government justly, so that the weight of taxation rested equally on all. \textit{Id.}

4. O. Eckstein, \textit{Public Finance} 59 (1967). Eckstein calls this criteria of equality the "benefit principle."

5. \textit{Attoe, supra} note 3, at 2.

6. \textit{Attoe, supra} note 3, at 24; R. Hatfield, \textit{Governor's Minnesota Property Tax Study} 11-27 (1970) [hereinafter cited as HATFIELD]. Hatfield's comprehensive study was prepared with the assistance of the Governor's Property Tax Committee. The study includes a thorough discussion of property tax classification in Minnesota.


8. \textit{Attoe, supra} note 3, at 2.

9. To date twenty-three states have either constitutional or legislative provisions allowing classification of real property for tax purposes. Such classification systems fall into one or a combination of the following three types: (1) taxation by use value as opposed to fair market
Such classification is not new to Illinois. The 1870 Illinois Constitution prohibited classification and required that all real property be assessed uniformly for tax purposes.\textsuperscript{10} However, de facto classification in the form of over- or under-assessment of property as a class was often reported\textsuperscript{11} and litigated.\textsuperscript{12} Legalizing de facto classification, particularly in Cook County, was a central concern at the 1970 Illinois Constitutional Convention.\textsuperscript{13} As a result, the 1970 Illinois Constitution allowed counties with a population of more than 200,000 to enact ordinances classifying property for tax purposes; (2) differential assessment by ratio (property is assessed at the same rate but at a different fraction of market value depending on its use); (3) assessment at a uniform fraction of market value but application of different tax rates to the assessed value. Interview with Richard Almy, Director of Research and Technical Services of the International Association of Assessing Officers, in Chicago, Illinois (August 4, 1978).


11. FISHBANE, supra note 10, at 71-72; LELAND, supra note 2, at 20; Netsch, Article IX Revenue, 52 Chi. B. REC. 103, 108 (1970) [hereinafter cited as Netsch]; WATTLING, TAXATION OF REAL PROPERTY IN COOK COUNTY—THE "RAILROAD CASES" AND THE FUTURE OF DEFACTO CLASSIFICATION, 1 J. MAR. J. PRAC. & PROC. 212 (1968). Wattling states that Illinois counties assessed railroad property at its full value and assessed other property at only a portion of its full market value (55% or less). Id. at 235.


The trend toward real property tax classification continued with the farmland use provision which was added to the 1939 Revenue Act by the General Assembly.

The farmland use provision directs assessors in counties with populations of more than 200,000 to value agricultural property on the basis of its use valuation, rather than on its fair market value, by estimating the price such property would bring at a voluntary sale for farming or agricultural uses. In 1973, the provision was amended to apply to all counties regardless of population. To qualify for farmland use valuation, the person liable for the taxes must file an application with the county assessor each year in which the valuation is desired. When the property is no longer used for agricultural or farming purposes, the person liable for taxes must pay three years' rollback taxes (the difference between the taxes actually paid in each of the three preceding years and what those taxes would have been if computed on the fair market value of the land) together with five percent interest. The constitutional validity of the farmland use provision was addressed in Hoffmann v. Clark, in which the Illinois Supreme Court held that the 1970 Illinois Constitution did not limit the General Assembly's power to classify real estate for property tax purposes.

The purpose of this Note is threefold. First, it will challenge the court's reasoning and analysis while discussing the impact of the decision on property tax classification in Illinois. It will also examine the effectiveness of property tax classification both as a method of subsidy and as a means of influencing private sector decision-making. Finally, the Note will explore possible alternatives to land classification.

The action in Hoffmann was brought by landowners in DuPage County who were assessed rollback tax bills on property which previously had been assessed at its farmland use value. In each case the rollback tax bill was triggered by at least one of the following factors: agricultural use of the

16. Use valuation is the valuation of land by its use, as opposed to the price a willing buyer would pay to a willing seller. While a willing buyer may bid based on the development value of the land, use valuation does not account for development value. The use value may be determined in several ways. For example, some states estimate use value of farmland according to land productivity. Those states use land value tables which have been constructed on the basis of productivity ratings. For a full discussion of this topic, see Keene, Differential Assessment and the Preservation of Open Space, 14 Urb. L. Ann. 11, 31 (1977) [hereinafter cited as Keene].
21. See Trial testimony of both the Deputy Supervisor of Assessments and the Officer in charge of agricultural applications for the Supervisor of Assessments. Brief for appellee at 20.
property ceased; an inspection revealed a non-agricultural use; or the yearly application was not found or filed. The plaintiffs contended that the farmland use valuation constituted a legislative classification of real estate for purposes of taxation in violation of sections 4(a) and (b) of the Illinois Constitution which provide that real property taxes shall be levied uniformly as ascertained by the General Assembly. The plaintiffs also alleged that the five percent interest imposed on back taxes constituted an unlawful penalty and that the farmland use valuation violated the equal protection and due process clauses of the Illinois and United States Constitutions. The trial court held that the statute was unconstitutional and enjoined the defendants from collecting the rollback taxes. Because the circuit court held the statute unconstitutional, the case was appealed directly to the Illinois Supreme Court.

After summarily dismissing two technical arguments based on the doctrine of exhaustion and waiver and estoppel, the Illinois Supreme Court con-

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22. The officer in charge of agricultural assessments testified that, although a parcel in excess of ten acres is farmed, the application may nonetheless be denied if there is a commercial building on the parcel. In one parcel, plaintiffs were denied an agricultural valuation because portions of the entire parcel which were still being farmed were conveyed for non-agricultural use. Brief for appellee at 23.

23. E.g., one parcel was conveyed to a construction company and developed into single family homes. The construction company was assessed rollback tax bills for the three years prior to its acquisition, covering the period when the property was used for farming. Brief for appellee at 6.

24. E.g., in one parcel, all of the property was farmed continuously up to the date of filing the complaint. But because the clerk had changed the parcel number, the old parcel number could not be identified and rollback taxes were assessed. A certificate of error was ultimately issued the day of the trial. In another instance, the land was used for agricultural purposes up to the time of the trial and the rollback tax bill apparently was issued because the new owners had failed to file an application. Brief for appellee at 20.

25. 69 Ill. 2d at 412, 372 N.E.2d at 77.

26. Specifically, the 1970 Illinois Constitution states that real property taxes:
   (a) [s]hall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.
   (b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation.

ILL. CONST. art. IX, § 4.

27. 69 Ill. 2d at 429, 372 N.E.2d at 87.

28. Id. at 410, 372 N.E.2d at 77.

29. Id. at 408, 372 N.E.2d at 76. The plaintiffs appealed pursuant to Supreme Court Rule 302(a)(1), which states in pertinent part that appeals from final judgments of circuit courts shall be taken directly to the Illinois Supreme Court when an Illinois statute has been held invalid.

30. Defendants argued that taxpayers who have not exhausted all administrative remedies are barred from seeking relief in equity. The court applied an exception to the doctrine of exhaustion for the taxpayer who attacks a statute as unconstitutional, relying on the previous decisions of Ill. Bell Tele. Co. v. Allphin, 60 Ill. 2d 350, 326 N.E.2d 737 (1975), and Clarendon Assoc. v. Korzen, 56 Ill. 2d 101, 306 N.E.2d 299 (1973).

31. Defendants argued that the doctrine of waiver and estoppel barred the plaintiffs from challenging the validity of a statute under which they voluntarily applied for and received ben-
strued section 4 of the Illinois Constitution as not specifically limiting the General Assembly’s inherent power to classify real property for tax purposes. In addition, the court asserted that judicial restraint should be exercised in interpreting the new constitution, stating that:

We are at this period of time early in the life of the constitution. We should not now through narrow construction make it difficult or impossible for the legislative body at some future time to resolve revenue problems which are not now known or foreseeable.

As a result, the court held that the farmland use provision did not violate sections 4(a) and (b) of the Illinois Constitution.

The court also had little difficulty disposing of the plaintiff’s additional arguments. It found no violations of the due process and equal protection clauses of the Illinois and United States Constitutions. In addition, the court held that the five percent interest payment on back taxes was not a penalty or punishment and, therefore, the interest was not a taking of property without due process. Rather, the interest was both part of the legislative scheme to discourage the diversion of agricultural land to other uses and a method of partially reimbursing the taxing bodies for the loss of revenue to which they would have been otherwise entitled.

ANALYSIS OF THE DECISION

The court in Hoffmann found that the General Assembly had the authority to raise revenue through its inherent legislative power and a specific grant

32. Id. at 424, 372 N.E.2d at 84.
33. The court found that the rollback provisions did not deny the plaintiff’s due process because the provision was neither vague nor indefinite. Specifically, the court held that the assessment practices in DuPage County, which prevented the plaintiffs from obtaining a farmland use assessment because a portion of the farm was conveyed for non-agricultural use, were a misapplication of the statute and did not render the rollback provisions vague or indefinite. Similarly, the court held that the plaintiffs’ failure to qualify for the farmland use valuation on their ten acre farm because the DuPage County Assessor did not assess on the basis of ten acre parcels did not make the rollback provisions vague or indefinite.

Moreover, the court determined that the taxpayers had no right to notice and a hearing prior to imposition of the rollback taxes since the purchaser or property taxpayer was obligated to ascertain on what basis the land was taxed. If a parcel was wrongfully removed from its farmland use classification, “then relief [could] be had by the traditional method of paying taxes under protest and filing objections to the application for judgment. ILL. REV. STAT. ch. 120, §§ 675, 716 (1973).” Id. at 428, 372 N.E.2d at 86-87.

34. The court rejected the argument that the rollback tax provision deprived the plaintiffs of equal protection because the provision taxed some agricultural property at a higher rate than others. The court held that the legislature’s division of agricultural property into two classes—that which qualified for special treatment under §§ 501a-1 to 501a-3 and that which no longer qualifies—was a rational exercise of legislative authority. Id. at 424-27, 372 N.E.2d at 85.
35. Id. at 429, 372 N.E.2d at 87.
of the Revenue Article of the 1970 Illinois Constitution. The court also held that the General Assembly's power to raise revenue was broad enough, unless specifically limited by the Constitution, to include the power to classify real property for tax purposes. Although the plaintiffs alleged that section 4 provided such a limitation, the court rejected their argument and held that sections 4(a) and (b) were not express limitations upon the broad power to raise revenue. As a result, the court found that the General Assembly had the power to classify property for general tax purposes and to implement the rollback provision.

In determining whether sections 4(a) and (b) excluded the power to classify real estate from the Assembly's general authority to raise revenue, the court apparently found that it could not rely on the plain language or meaning of those sections. Instead, the Hoffmann court determined whether the General Assembly was prohibited from classifying property into farm and non-farm land by interpreting constitutional intent as evinced by the debate records of the 1970 Constitutional Convention, the proposed amendments to the text of section 4, the report to the convention by the Committee on Revenue and Finance, and the report of the Committee on Style, Drafting, and Submission. The court found that since these sources did not clearly indicate that the General Assembly was precluded from classifying real property for tax purposes, there was no constitutional restriction on the General Assembly's right to exercise this taxing power.

The court's interpretation of section 4, however, is questionable. In the first step of its analysis, the court was too quick to disregard the plain meaning of the language of section 4(a) which indicates that the General Assembly was restricted from classifying real property. The court has articulated in previous cases that "[i]n determining the intention and purpose underlying a constitutional provision the language used should be given its plain and commonly understood meaning unless it is clearly evident that a contrary meaning was intended." Further, "[w]hen this court, prior to the adoption of the constitution of 1970 has defined a term found therein, sound rules of construction require that it be given the same definition un-

36. Id. at 423, 372 N.E.2d at 84.
37. Id.
38. Id. at 423-24, 372 N.E.2d at 84.
39. Id. at 424, 372 N.E.2d at 84.
40. Id. at 424, 372 N.E.2d at 85.
41. Although the court did not expressly find that these sections were ambiguous, it must have assumed that the language was not clear because it went on to analyze the record of the 1970 Constitutional Convention.
Coalition held invalid a proposed initiative amendment to the legislative article of the 1970 Constitution because it did not affect both the structure and the procedure of the General Assembly. Coalition followed Homer v. Bd. of Ed., 47 Ill. 2d 480, 486, 265 N.E.2d 616, 620 (1971); Locust Grove Cemetery Assn. v. Rose, 16 Ill. 2d 132, 139, 156 N.E.2d 577, 581 (1959); People v. Ill. Cent. R.R. Co., 273 Ill. 220, 223, 112 N.E. 700, 706 (1916); Law v. Hock, 87 Ill. 385, 393 (1877).
less it is apparent that some other meaning was intended." Taxing laws, in particular, are to be strictly construed, and they are “not to be extended by implication beyond the clear import of the language used.” As stated earlier, section 4(a) requires that real property taxes be levied “uniformly,” a term well defined in prior Illinois case law. Thus, contrary to the holding in Hoffmann, section 4(a) should be construed on the basis of the plain language of the constitution as interpreted by prior case law.

For example, in Bistor v. McDonough, the court noted that “[u]niformity in taxing implies equality in the burden of taxation; and this equality cannot exist without uniformity in the basis of assessment as well as in the rate of taxation.” Therefore, uniformity as defined in Bistor precludes the use of differing methods of valuation for different classes of real property, as is done in the farmland use provisions. Although Bistor was decided prior to enactment of section 4(a), sound rules of constitutional construction require that the prior interpretation of “uniformity” be used to interpret section 4(a) unless some other meaning is apparent. There is no indication, however, that “uniformity” as used in section 4(a) was clearly intended to take on a new meaning.

During the debates of the 1970 Illinois Constitutional Convention, the cases of Miller v. Doe and Toman v. Olympia Fields Country Club were called to the attention of the convention by a single delegate as holding that the requirement of uniformity of the 1870 Illinois Constitution did not

43. Paper Supply Co. v. Chicago, 57 Ill. 2d 553, 565, 317 N.E.2d 3, 9 (1974). In Paper Supply Co., the Chicago Employer’s Expense Tax Ordinance was held not an occupation tax and, thus, did not violate § 6(e) of article VIII of the 1970 Illinois Constitution.

44. Svithiod Singing Club v. McKibbin, 381 Ill. 194, 200, 44 N.E.2d 904, 908 (1942). Svithiod held that a social club, which was organized as a non-profit corporation and which served food and drink to its members but not to the public, was not subject to the Illinois Retailers’ Occupation Tax. The court followed Svithiod in Oscar L. Paris Co. v. Lyons, 8 Ill. 2d 590, 598, 134 N.E.2d 755, 759 (1956) and in Hiken Furniture Co. v. City of Belleville, 53 Ill. App. 3d 306, 310, 368 N.E.2d 961, 964 (1977). The court also said in Johnson v. State Electoral Bd., 53 Ill. 2d 256, 258-59, 290 N.E.2d 886, 888 (1972) that “the general principles applicable to the construction of statutes similarly apply in the construction of constitutional provisions.” The court followed Johnson in Coalition v. State Bd. of Elections, 65 Ill. 2d 453, 464, 359 N.E.2d 138, 143 (1976). Thus, the court under this standard would construe the revenue article strictly and not extend that article beyond the clear import of the language used.

45. ILL. CONST. art. IX, § 4(a). See also note 26 supra.

46. See note 47 and supporting text infra.

47. 348 Ill. 624, 629, 181 N.E. 417, 419 (1932). See also note 49 and supporting text infra. This definition of uniformity was used by the Illinois Appellate Court in 1976 when taxpayers obtained relief from tax assessments because their property was assessed at a greater proportion of its true value than similar property in the same taxing district. Stephens v. Property Tax App. Bd., 42 Ill. App. 3d 550, 552, 356 N.E.2d 355, 356 (1976). See also Toman v. Chicago Union Sta. Co., 383 Ill. 133, 48 N.E.2d 524 (1943).

48. See note 43 and supporting text supra.

49. 22 Ill. 2d 211, 174 N.E.2d 830 (1961).

50. 374 Ill. 101, 28 N.E.2d 109 (1940).

51. The 1870 Illinois Constitution states in pertinent part: 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
preclude the General Assembly from classifying real property. The uniformity limitation was interpreted by this delegate to mean "only that taxes must be equal and uniform among members of the same class." However, the 1870 Illinois Constitution required uniform taxation of all realty, and the above cases did not conflict with that requirement. In Miller, the plaintiffs alleged that classification of real property into "lands" (unplatted property) and "lots" (platted property) so as to apply a different percentage increase to each during quadrennial assessment violated the constitutional requirement of uniformity of taxation. However, such classification for purposes of equalization was held to be not only permissible but also necessary because it made the assessed valuation of real property uniform. Without equalization, by first classifying property and then applying a different percentage increase to each class, "land" would be assessed at a greater proportion of its fair cash value than "lots" in the same township. Toman v. Olympia Fields Country Club could arguably stand for the proposition that classification of real property for the purpose of non-uniform taxation was allowed under the 1870 Constitution. Neither the court nor commentators, however, have viewed Olympia Fields as standing for that proposition.

to the value of his, her, or its property . . . ; but the general assembly shall have the power to tax peddlers, auctioneers . . . and persons or corporations owning or using franchises and privileges, in such manner as it shall, from time to time, direct by general law, uniform as to the class on which it operates.

ILL. CONST. art IX, § 1 (1870).

52. 69 Ill. 2d at 419, 372 N.E.2d at 82.
53. Id.
56. Id. at 225, 174 N.E.2d at 838.
57. 374 Ill. 101, 28 N.E.2d 109 (1940).
58. In Olympia Fields, a country club's golfing green was assessed at a value per acre approximately twice the value of adjoining farmlands. Since the golf course had been specially improved (e.g., by the addition of a water system worth $65,000 and a putting green worth $50,000), the assessor had the right to take these improvements into account when determining market value. The court cited Olympia Fields in Miller v. Doe, 22 Ill. 2d 211, 225, 174 N.E.2d 830, 837-38 (1961) and People v. S.W. Tel. Co., 377 Ill. 303, 36 N.E.2d 362 (1941) (cited in Hoffmann as a case dealing with classification). The issue in S.W. Tel. Co. was whether the same equalization factor had to be applied on both real and personal property to avoid violating the 1870 Illinois Constitution. The court concluded that reducing the assessment of real property without reducing the assessment of personal property did not violate the uniformity requirement of the constitution, since real property belonged in one class and personal property belonged in another. The court has never used Olympia Fields as precedent that uniformity permits classification by assessment of real property on one basis and assessment of other property on another.
59. E.g., Netsch stated that "the court loosely said that the Constitution does not prohibit classification of property, but the facts indicate that it was dealing only with differences in value which take into account improvements to land." Netsch, supra note 11, at 113 n.9.
Hence, had the Hoffmann court applied the principal of constitutional construction which provides that terms are given their common meaning unless a contrary meaning is clearly intended, it would have concluded that a contrary meaning was not clearly intended. “Uniformity” in section 4(a) would have meant uniformity on the basis of assessment. A different basis of assessment for a farmland by means of a classification would have been a violation of this uniformity requirement.

The court apparently determined that the language of section 4(a) was ambiguous, for it then proceeded to consider the formal record of the 1970 Constitutional Convention to determine whether the General Assembly was expressly limited from classifying real estate for tax purposes. This inquiry into the constitutional intent of section 4, the second step of the Hoffmann court's analysis, is also susceptible to challenge.

Previous decisions have frequently referred to the formal record of the convention when construing the 1970 Constitution. However, not only is the record a questionable tool to use in constitutional interpretation, but also the court's application of the record in Hoffmann was not consistent with prior Illinois cases. Specifically, the Official Explanation, the convention's description of the proposed text of the Constitution in layman's language, was not used to determine constitutional intent in Hoffmann.

The court first considered the debates of the 1970 Constitutional Convention. One commentator has stated, however, that the record of the debates, rarely clear on anything more important than the time of luncheon recess, often can be interpreted in several ways. In fact, the Hoffmann court concluded that it was impossible to determine from the debates whether the General Assembly was to be prohibited from classifying real property. The Hoffmann dissent interprets the same debates as evincing a

61. Id. at 195.
62. The Official Explanation can arguably be considered part of the public's constitutional intent concerning the question of adoption. Id. at 211-12.
63. Id. at 191.
64. See Paper Supply Co. v. Chicago, 57 Ill. 2d 553, 317 N.E.2d 3 (1974) in which the dissent disagrees with the majority about the meaning of a delegate's speech concerning end run taxes to avoid constitutional proscriptions. The court often uses the debates in construing the constitution. See Lousin, supra note 60, at 206-11. See also the use of the debates in Judicial Inquiry Bd. v. Hartel, 72 Ill. 2d 225, 380 N.E.2d 801 (1978); Lunding v. Walker, 65 Ill. 2d 516, 359 N.E. 2d 96 (1976); Scott v. Briceland, 65 Ill. 2d 485, 359 N.E.2d 149 (1976); Joliet v. Bosworth, 64 Ill. 2d 516, 356 N.E.2d 543 (1976).
65. Specifically, the convention was primarily concerned with preserving and legitimizing de facto classification in Cook County. That is, the debates were concerned with whether classification should be allowed at the county level. 69 Ill. 2d at 414-16, 372 N.E.2d at 79-80.
definite intention that the General Assembly retain the right to enact laws limiting the manner in which counties over 200,000 could classify, but that no county could be required by the General Assembly to classify. Thus, Justice Underwood interprets the debates as indicating an intent to restrict the General Assembly's power.

Not only is the record of the debates subject to multiple interpretations, but evidence of proposed amendments is also a questionable source of definitive intent—the same defeated amendments are interpreted differently by the court and dissent. An amendment was defeated which would have prohibited all classification of real property for tax purposes, and another was rejected which would have prohibited all classification of any kind in counties with populations of under two million. Although the court views these defeated amendments as a rejection of the proposition that the General Assembly was to be prohibited from the power to classify, the dissent views them as an attempt to reach a compromise between two opposing viewpoints. To Justice Underwood, the rejected amendments do not conflict with the idea that the convention, in reaching its compromise, clearly prohibited classification by the General Assembly.

Yet another questionable source of the accurate meaning of the language in section 4 is the Committee Reports prepared by the committee which drafted the text of the proposed article. These reports explained the text's purpose, changes from the 1870 Constitution, and rejected solutions to particular problems. The problems of interpreting committee reports are compounded because the convention never adopted a substantive report, but used the reports only as background. Thus, it is impossible to determine exactly what the convention itself accepted or rejected. In fact, the court and the dissent each used the Committee Report of the Committee on Revenue and Finance to substantiate its own position.

66. Justice Underwood, in dissent, reads the debates as reaching a compromise between those wanting the General Assembly to prescribe a permissive classification scheme which any county could adopt, those favoring classification only in larger counties, and those opposing any classification. A compromise was reached in large part due to a recognition of the necessity to legitimize de facto classification in Cook County. Id. at 433-34, 372 N.E.2d at 94.

67. The court often uses the amending process as an aid in interpretation. See Lousin, supra note 60, at 209-11. See also the use of amendments proposed and defeated in Lunding v. Walker, 65 Ill. 2d 516, 359 N.E.2d 96 (1976). Lunding held that members of the state board of elections can only be removed for cause. Id. at 51, 359 N.E.2d at 97. In construing the Illinois Constitution art. V, § 10, the court found that there was disagreement among the delegates, evinced by the amendments suggested and defeated. Id. at 525-27, 359 N.E.2d at 100-01. However, the dissent noted that it must read the action on the amendment "in the context of the whole discussion in order to ascertain its true significance." The amendment was defeated in order to retain the words of the 1870 Illinois Constitution and the delegates were in agreement. Id. at 532, 359 N.E.2d at 103.

68. 69 Ill. 2d at 414, 372 N.E.2d at 80.
69. Id. at 415, 372 N.E.2d at 80.
70. Lousin, supra note 60, at 192.
71. Id. at 205.
72. The court finds evidence in the Committee Report that the General Assembly was not to be prevented in any future use of classification. 69 Ill. 2d at 413-14, 372 N.E.2d at 79. The
A final source of constitutional intent used by the court was the Report of the Committee on Style, Drafting, and Submission (SDS). The SDS re-drafted the solution arrived at by the Convention after a proposed article was submitted to debate by the delegates.\textsuperscript{73} The court, in\textit{Coalition v. State Board of Elections},\textsuperscript{74} rejected the explanation of the SDS because it was not a substantive committee of the Constitutional Convention but rather a procedural one concerned only with style and form.\textsuperscript{75} In\textit{Hoffmann}, however, the court followed, albeit inconsistently, the explanation found in the SDS report concerning the language of the Revenue Act. Specifically, the court wanted to know the significance of the explicit and implicit grants of authority to the General Assembly for non-property taxes in sections 2 and 5,\textsuperscript{76} as compared to the absence of the grant of authority to classify in section 4. The court accepted the SDS explanation that sections 2 and 5 of the Revenue Article were constitutional affirmations of authority and not grants of power to the General Assembly.\textsuperscript{77} However, it then rejected the SDS explanation that section 4 contained an “opening limitation of uniformity to which exceptions for classification are necessary.”\textsuperscript{78} Hence, the court’s application of the SDS explanation was not only inconsistent, but also questionable in light of the\textit{Coalition} decision.

The court also ignored the Official Explanation, an important source for determining the meaning of a constitutional article and one of the only parts of the record generally available to the public before the Constitutional Referendum.\textsuperscript{79} The delegates to the convention recognized that there would be two framers of the 1970 Constitution—the delegates would draft the constitution for referendum, and the electorate would adopt the convention’s proposal.\textsuperscript{80} The court frequently has used the Official Explanation as a
dissent, however, says that the convention rejected the idea of classification by the General Assembly.\textit{Id.} at 436, 372 N.E.2d at 90. (Underwood, J., dissenting).

\textsuperscript{73} Lousin,\textit{ supra} note 60, at 203.
\textsuperscript{74} 65 Ill. 2d 453, 359 N.E.2d 138 (1976).
\textsuperscript{75}\textit{Id.} at 471, 359 N.E.2d at 147.
\textsuperscript{76} Section 2 and Section 5 of article IX state in pertinent part:

\textbf{Section 2.} \textbf{—} Non-Property Taxes—Classification, Exemptions, Deductions, Allowances and Credits:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly.

\textbf{Section 5.} \textbf{—} Personal Property Taxation

(a) The General Assembly by law may classify personal property for purposes of taxation by valuation, abolish such taxes on any or all classes and authorize the levy of taxes in lieu of the taxation of personal property by valuation.

\textit{ILL. CONST.} art IX, §§ 2 & 5(a).

\textsuperscript{77} 69 Ill. 2d at 420-21, 372 N.E.2d at 82-83.
\textsuperscript{78} \textit{Id.} at 420, 372 N.E.2d at 83.
\textsuperscript{79} Lousin,\textit{ supra} note 60, at 211.
\textsuperscript{80} \textit{Id.} at 212. Lousin points out that the debates are full of references to the “Fourth Reading”—the first three readings would take place at the convention but the fourth would be by the voters at the referendum.
source of constitutional intent. While it is true that the court has consulted the debates of members of the convention when determining the meaning of provisions which were thought to be doubtful, it also has specified that "in construing the constitution, the true inquiry concerns the understanding of the meaning of its provisions by the voters who adopted it. . . ."

Further, Justice Ryan noted in his concurring opinion in Board of Education v. Bakalis that the standard of constitutional interpretation should be what the voters intended when they ratified the constitution because the delegates at times evaded controversial issues and were less than candid with the electorate.

The Hoffmann court, however, refused to consider the Official Explanation of section 4. It is clear that the Official Explanation recognized a general rule of uniformity of taxation based on the value of property. Classification was an exception to the rule of uniformity, permitted only in counties of more than 200,000 people. The General Assembly had the power to regulate—not order—such classification in those counties only. Thus, the Official Explanation indicates that the uniformity provision of section 4 is an express limitation on the taxing power of the General Assembly. Had the court taken the Official Explanation into account, it would have concluded that classification under farmland use valuation was invalid.

Concededly, the court's minimal scrutiny of the General Assembly's method of classification was consistent with earlier decisions.


83. 54 Ill. 2d 448, 299 N.E.2d 737 (1973).

84. Specifically, Justice Ryan said: "It was the vote of the people which was required to bring this constitution into existence. I am therefore concerned only with what the voters intended when they voted for the adoption of the constitution. . . ." Id. at 477, 299 N.E.2d at 751.

85. The Official Explanation states that:

Any tax on real property must be uniform and based on the value of the property, except in counties which are permitted to classify real estate for taxation purposes. Counties with more than 200,000 population may divide real property into reasonable classes with uniform assessments within each class, subject to regulation by the general assembly.


86. In Heyman v. Mahin, 49 Ill. 2d 284, 275 N.E.2d 421 (1971), the supreme court used minimal scrutiny when the distributor of cigarettes alleged that the Cigarette Stamp Act, which provided for a gradual rate of discount on a distributor's purchases of tax stamps, was unconstitutional as violating the uniformity provision of section 1 of article IX of the 1970 Illinois Constitution and the equal protection clause of the fourteenth amendment of the federal constitu-
had the Hoffmann court construed section 4 using the dual standard that the language used in a constitutional provision should be given the same meaning that it had prior to the Constitution and that taxing laws are to be strictly construed, or had the court taken into account the Official Explanation as a source of constitutional intent, it would have correctly concluded that the 1970 Constitution limits the General Assembly's power to classify. Thus, the court never should have reached the question of whether the General Assembly's method of classification was constitutional.

IMPACT

Hoffmann sets a poor precedent. It portrays judicial inconsistency in cases of first impression interpreting the Illinois Constitution. In construing section 4 of the Revenue Act, the Illinois Supreme Court ignored the meaning of that section's terms as defined in prior Illinois case law\(^87\) and instead looked to portions of the formal record of the 1970 Constitutional Convention\(^88\) which were inconsistent with other cases construing the 1970 Constitution.\(^89\) It is, therefore, difficult to predict the method of interpretation the court will use in future decisions requiring construction of the new constitution.

The impact of Hoffmann, however, goes beyond its precedential value. In Hoffmann, the Illinois Supreme Court interpreted the 1970 Illinois Constitution as imposing no limits on the General Assembly's power to classify real property for tax purposes. Accordingly, the General Assembly now has the ability to direct counties throughout the state to tax property on a non-uniform basis tied to land use. The court has given the General Assembly wide latitude in the use of its power to tax not only in the area of raising revenue, but also as a vehicle for attaining social objectives.

The impact of Hoffmann will be to legalize, and thus further, the movement in Illinois to use the real property tax as both a means of subsidizing certain landowners and a method of regulating the use of land. Indeed, between the enactment of the farm use valuation in 1971 and the Hoffmann

\(87\) See note 47 and accompanying text supra.

\(88\) See note 60 and accompanying text supra.

\(89\) See notes 79-85 and accompanying text supra.
decision, the General Assembly mandated that other types of real property be classified.\textsuperscript{90} In addition, the 1976 House Republican Staff reported legislative receptiveness to the use of classification and special valuation to promote land use.\textsuperscript{91} For example, in order to help Illinois attract and retain industry, a proposal was made for mandatory deferment of any increased valuation on real property improved for industrial purposes until two years after completion.\textsuperscript{92} Another proposal suggested exempting improvements on residential homes from taxation to provide an incentive to residential homeowners, especially those living in deteriorated areas, to renovate their houses without increased taxes.\textsuperscript{93} The legislature's eagerness to resort to classification to achieve social objectives, coupled with the Hoffmann court's interpretation of section 4 of the Revenue Act, can only further a questionable means of subsidizing selected taxpayers and regulating land use. Thus, the impact of the Hoffmann case extends well beyond the mere classification of farmland for tax purposes. The court, by broadly construing section 4 to allow the General Assembly to classify property, has opened wide the door to state-mandated classification of all real property for tax purposes.

Although there are certain goals to be achieved through classification, it has been extensively criticized as having no economic justification.\textsuperscript{94} In other words, classification disregards principles of equity in that it provides tax relief to some by shifting the tax burden to other property owners within the taxing district.\textsuperscript{95} To the extent that other property owners are not compensated for this tax shift, classification erodes the local tax base.\textsuperscript{96}

90. Classes mandated since 1971 are: (1) land used for airport purposes in counties with a population over 200,000 together with a three-year rollback tax and five percent interest charge, ILL. REV. STAT. ch. 120, §§ 501b-1 to 501b-3 (Supp. 1977); (2) condominiums and cooperatives in counties with a population exceeding 200,000 to be assessed on the same basis as single family residences, ILL. REV. STAT. ch. 120, § 501c-1 (Supp. 1977); (3) alternate valuation of improvements in property heated or cooled by solar energy, ILL. REV. STAT. ch. 120, § 501d-3 (Supp. 1977); (4) Farmland Value Assessment, an alternative to §§ 501a-1 to 501a-3, which specifies that any farm owner is eligible for farm value assessment and provides a method of computation of that value, ILL. REV. STAT. ch. 120, § 501e (Supp. 1977); (5) land used for open space purposes together with a three year rollback tax and five percent interest charge, except in counties with a population over 200,000, ILL. REV. STAT. ch. 120, §§ 501g-1 to 501g-3 (Supp. 1977); (6) land with residential maintenance and repairs not exceeding $7500 in counties with less than 3,000,000 inhabitants, ILL. REV. STAT. ch. 120, § 501h-1 (Supp. 1977); and (7) land containing pollution control facilities, ILL. REV. STAT. ch. 120, §§ 502a-1 to 502a-3 (Supp. 1977).


92. Id. at 29-30.

93. Id. at 28.

94. See FISHBANE, supra note 10, at 77; HATFIELD, supra note 6, at 11-31. See also notes 5-9 and accompanying text supra.

95. ATTOE, supra note 3, at 24; Denne, Explicit Tax Policies and the Promotion of Specific Land-Use and Economic Development Objectives: A Review, 11 ASSESSOR'S J. 13 (1976) [hereinafter cited as Denne]. Denne states that "[t]he experience gained from property tax systems of the traditional sort suggests that they are first and foremost politically popular soak-the-rich schemes . . . only incidentally thought to have economic development consequences." Denne supra at 44-45.
Classification also has been criticized on the theory that lowering the taxes on some property creates a hidden subsidy for that property owner.\textsuperscript{97} The Hoffmann court correctly pointed out that without farmland use valuation, taxes would far exceed the value of agricultural products produced on the land.\textsuperscript{98} Thus, a subsidy may be necessary for the continued economic viability of an enterprise such as farming. It is questionable, however, whether lowering property taxes is the best method of subsidization. Classifying property, instead of providing direct subsidies, has the disadvantages of administrative problems and record keeping costs.\textsuperscript{99} Moreover, while classification may be politically advantageous in that it reduces the visibility of the
subsidy, any deviation from the normal, accepted property tax structure should be viewed as a tax expenditure and, thus, undergo the same critical evaluation as a direct government expenditure.  

Employing classifications to influence private sector decision-making in land development and land use also has been criticized. In general, "tax breaks are often blunt instruments that are unsuited for targeting specific behavior or groups of people." Property taxes are only a small fraction of the market value of property and, therefore, do not influence the use of land in any particular way or intensity.

For example, experiments in classifying land to maintain farmland use have been unsuccessful in the long run. As indicated by recent studies, farmland use valuation, with or without a tax rollback, has not been effective in preserving farmland and open space. The change from agricultural to non-agricultural uses is motivated not by property tax levels, but primarily by the landowner's life-cycle considerations, such as health, estate planning, capital gains tax, and labor supply conditions. When, as a result of these life-cycle considerations, the farmer decides to sell, urban uses will generally outbid agricultural uses. That is, bids for land on the urban fringe are higher than what the land is worth for agricultural uses.

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100. Ladd, supra note 7, at 8. See Adamson, supra note 97, at 121; S. Surrey, Pathways to Tax Reform 143-44 (1973) (Surrey's discussion is in terms of the federal income tax but the analysis extends to property taxation as well).
102. Id.
103. Stenehjem, supra note 7, at 37-38; Von Bories, Local Finance and Community Development, 30 J. AM. INST. PLAN. 34, 40 (1964).
104. Untaxing Open Space, supra note 95; R. Gloude, Use-Value Farmland Assessments: Theory, Practice, and Impact (1974). Gloude's study of the impact of the farmland use valuations in several states contains extensive comparisons of different statutory and constitutional farmland use valuation provisions. See also Keene, supra note 16 for various conclusions drawn from empirical studies done in several states of the effect of Farmland Use Valuation on the real estate market. For example, most of the participants in a Washington study reported that lower taxes under the Washington program (which included a rollback provision) did not have any effect on their decision to sell the land or change its use. In a New Jersey study, 56% of the buyers and 59% of the sellers of farmland said that the New Jersey Farmland Assessment Act had no influence on their decisions. Id. at 43.
105. The court obviously was misled into correlating widespread attention given in the periodicals of the problem of fast disappearance of agricultural land with the effectiveness of the legislative action taken to remedy the problem. The consensus in the periodicals is that "preferential assessment is ineffective in discouraging urban development of farmland. . . . When the economic pressure is strong, the rollback provisions of deferred taxation and restrictive agreement methods . . . will have little deterrent effect." Ellingson, supra note 95, at 573. See Adamson, supra note 97, at 112; Cooke, supra note 97, at 639; Comment, Property Taxation of Agricultural and Open Space Land, 8 Harv. J. LEGIS. 158, 169-70 (1970); Note, Preferential Property Tax Treatment of Farmland and Open Space under Michigan Law, 8 U. Mich. J. Leg. Ref. 428, 446 (1975) [hereinafter cited as Preferential Property Tax Treatment].
106. Denne, supra note 95, at 39; Keene, supra note 16, at 42-43.
because buyers can develop the land and sell it at a higher price for residential, industrial or commercial purposes. 108 Moreover, when the farmer decides to sell, the farmland use valuation may also benefit and encourage land speculators, who can avoid taxes by conducting very minimal farming operations while waiting for the city to grow toward or around the property and increase the land’s market value. 109 Granted, there are a certain number of farmers on the urban fringe who will continue farming because of lower property taxes (those whose net returns will be shifted from insufficient to sufficient). However, the effect of keeping certain property off the market while neighboring property is being bought up for urban uses is a “hopscotch pattern of urban sprawl.” 110 Thus, differential taxation of farmland has been criticized in that it forces a city in the short run to leapfrog over deferred property and create subdivisions which are not contiguous to the principal urban area. As a result, an uneconomic urban sprawl is created which greatly raises the cost of local government services. 111

A further impact of Hoffmann is that the General Assembly may now order the use of property taxation in an attempt to influence the locational decisions of industry. 112 Property taxes, however, have been found to be relatively inconsequential at the regional and state levels as a means of influencing such industrial decisions. 113 Non-tax factors such as the location of raw materials, markets, and labor tend to be more influential in a firm’s selection of a particular region. 114 In addition, it has been argued that the reason for the lack of priority of property tax factors is that higher property taxes can be passed along to the consumer and are deductible as a part of the cost of operation. 115

The Hoffmann case also legalizes the legislative use of property classification and taxation to influence decisions of the private sector with regard to

108. Id. at 27.
109. Hatfield, supra note 6, at 11-87. See Adamson, supra note 97, at 112; Attoe, supra note 3, at 22; Ellingson, supra note 95, at 55; Preferential Property Tax Treatment, supra note 105, at 639.
110. Adamson, supra note 97, at 120.
111. Id.; Hatfield, supra note 6, at 11-87, 11-88; Ladd, supra note 7, at 9.
112. See note 92 and accompanying text supra.
113. See Alyea, supra note 96, at 146; Denne, supra note 95, at 32-33; J. Due, Studies of State-Local Tax Influences on Location of Industry, 14 NAT. TAX J. 163, 171 (1961); L. Mitchell, The Advantages and Disadvantages of Differing Levels of Assessment for Commercial and Residential Properties, 1 Assessor's J. 17, 24 (1966) [hereinafter cited as Mitchell]; Stenehjem, supra note 7, at 67; D. Zarnoch, Efficiency Effects of a Classified Property Tax: The West Virginia Case 48 (1973) [hereinafter cited as Zarnoch]; Montana Legislative Council, Property Taxation and the Montana Property Classification Law: A Report to the Thirty-ninth Legislative Assembly 23 (1964). See also Denne, supra note 95, at 33 (the impact of local rate differentials on industrial location has not been measured accurately and may not be accurately measurable).
114. Alyea, supra note 96, at 147; State-Local Taxation and Industrial Location, United States Advisory Commission on Intergovernmental Relations 68 (1967).
However, the few empirical tests conducted in this area have failed to show a correlation between property taxes and home ownership decisions. It has not been shown that lowering taxes on owner-occupied homesteads encourages home ownership. Conversely, higher taxes on second or seasonal homes do not appear to discourage ownership. Differential taxation of residential property seems not to generate long-run land use trade-offs between residential and non-residential property.

As a further consequence of Hoffmann, the General Assembly is now empowered to utilize classification in the battle against urban deterioration. The use of property taxation to curb urban blight, however, has likewise been found to be largely ineffective. The prospect of increased property taxes is not a disincentive to housing improvements. The property tax has minimal impact on the decision to maintain, upgrade, or abandon low income housing structures. Factors such as neighborhood deterioration, inability to raise rents, lack of financing, racial considerations, and personal compatibility of landlord and tenant have greater influence. Experiments with tax abatement have not elicited a significant amount of private market investment in low income neighborhoods—either in new construction or in upgrading existing housing stock. Moreover, the burden of the property tax does not in general contribute to the flight to the suburbs. Criticism of the property tax system in urban areas has centered not on the present tax system, but on the failure to re-assess property downward in line with depreciating capital values; this is true in both the blighted neighborhood and in the transitional downward neighborhood.

116. See notes 90, 93, and accompanying text supra.
117. Hatfield, supra note 6, at 11-27.
118. Id. at 11-31. Taxes on second homes in Minnesota are higher than on non-seasonal homes, yet Minnesota ranks fourth nationally in the number of seasonal homes per capita.
119. Zarnoch, supra note 113, at 94-95. Zarnoch finds that differential tax treatment of residential property is capable of generating only short run land use trade-offs from residential to non-residential use.
120. See notes 90, 93, and accompanying text supra.
121. A Study of Property Taxes and Urban Blight: Report to the U.S. Department of Housing and Urban Development at 6 (1973) [hereinafter referred to as HUD]. Peterson points out that most improvements to the housing stock do not result in reassessment; the greatest deterrent has been neighborhood deterioration and inability to raise rents. Peterson, supra note 96, at 115.

Minnesota provided delayed assessment of housing improvements for six years to encourage improvement in ghetto or decaying problem areas of metropolitan cities. However, there were few applications from slum areas—most were from high value residential areas and for seasonal home improvements. See Hatfield, supra note 6, at 11-102.
122. Peterson, supra note 96, at 113, 115. The author hypothesizes that high property taxes may exert the greatest influence on low income housing stock through deterioration of maintenance standards that come with a cash flow shortage. Id. at 124.
123. Id. at 115, 121.
124. Id. at 117.
125. HUD, supra note 121, at 8.
126. Id. at 8, Peterson, supra note 96, at 110.
has not been found to be a cure for illegal assessments. Thus, the General Assembly's use of classification to cure urban blight may be constitutional after Hoffmann, but its effectiveness is doubtful.

ALTERNATIVES TO LAND USE CLASSIFICATION

Property taxation is being used in Illinois to achieve two revenue goals—influencing land use decisions and subsidizing selected property owners; however, it is not an effective instrument for bringing about these goals. They would be better achieved through legislation which separates the objectives of subsidy from land use control. If it is the legislature’s desire to subsidize a class of property owners such as farmers, a direct subsidy paid through state funds would be preferable to a subsidy achieved through lower property taxes. A state mandate for lower taxes on selected classes of property would likely cause an erosion of the local tax base, and any such loss of revenue would have to be made up by others within the local taxing district. A direct subsidy paid through state funds, however, would not weaken the local district’s tax base. Further, unlike the wealth distribution achieved through property tax classification, the revenues used to subsidize would be highly visible and could be reviewed frequently by the legislature to determine if the amount or type of subsidization is still desirable.

The goal of influencing land use would be better achieved through direct measures such as a separate land use statute rather than through property taxation. A state-level commission should be appointed to establish a comprehensive approach to land use. The commission could not only identify and articulate Illinois’ land use objectives and the order of their priority, but also determine those which would be directed appropriately at the regional or state level. It also might identify and recommend sources of funds as well as mechanisms for enforcement. Finally, the comprehensive plan could be coordinated with those of the federal government and neighboring states. Property classification may well be one tool of such a comprehensive plan, but its use as the sole tool clearly has been a failure.

127. R. Hatfield, Minnesota's Experience with Classification, The Property Tax: Problems and Potentials 239, 247 (1966); Netsch, supra note 11, at 113 n.12.
129. See note 96 and accompanying text supra. Alternatively, the local government can operate on a reduced level by limiting local services.
130. Id.
131. The General Assembly recently created the Illinois Futures Task Force (H.B. 2000), which has a two year mandate to evaluate and articulate state goals and objectives and to recommend an agenda for implementing actions. The main thrust of the Task Force will be in the areas of economic development and conservation of natural and man-made resources. However, it also will consider land use in Illinois. Hopefully, the Task Force is a prelude to a legislative commission with a specific mandate to provide a comprehensive plan for land use in Illinois.
CONCLUSION

In *Hoffmann* the Illinois Supreme Court interpreted the 1970 Illinois Constitution as allowing the General Assembly the power to mandate statewide classification of real property for tax purposes. Thus, Illinois in all probability can look forward to increasing numbers of real property classes. Classification, however, is an administratively cumbersome and politically inexpedient means of achieving the goal of subsidy. Moreover, it has proved to be unsuccessful in achieving land use or development related goals. At best, Illinois has chosen an ineffective technique of influencing private sector decision-making, and at worst, has embarked on a politically palatable course of tax favoritism. Hopefully, despite the decision in *Hoffmann*, the legislature will soon recognize that property taxation alone cannot attain the goals of raising revenue, providing subsidies, and controlling land use. More effective mechanisms for achieving these ends may then be developed.

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