Public Utility Property Assessment in Louisiana

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Before entering into a discussion of the system of ad valorem property tax assessment of so-called "public utilities" in Louisiana, it would be appropriate to sketch at this time the evolution of our present-day Tax Commission. In this centralized body is vested the power to assess directly the property of certain associations, individuals and corporations classifiable as public utilities. Prior to 1898 property belonged to individuals, associations and corporations engaged in railway, telegraph, telephone, sleeping car and express businesses, as well as property belonging to utilities other than those just enumerated,† was not assessable by any central board, but by the local authorities. In that year Article 226 of the Constitution provided for the creation of a State Board of Appraisers,

"... whose duty it shall be to assess the property belonging to corporations, associations and individuals employed in railway, telegraph, telephone, sleeping car and express business throughout the State of Louisiana..."

Act 106 of 1898² set up the Board and provided that it should adopt rules and procedures to determine "true and correct" assessments and valuations of the property belonging to the aforementioned. As an aside it might be said that we find depicted in Act 165 of 1902 one of the many eccentric manifestations of the workings of our legislature—a proposed amendment to the Constitution of 1898, providing for the creation of a State Board of

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1. By La. Act 161 of 1938 [Dart's Stats. (1939) § 8321] oil and gas pipe lines, electrical transmission lines and water and gas distribution systems were added to this list of so-called public utilities. See infra note 10.

Appraisers, a constitutional board already in existence and functioning.

In Act 12 of the Extraordinary Session of 1912 there was proposed an amendment to the Constitution for the reorganization of the system of taxation in the state of Louisiana, which included specific provisions regarding the assessment of property belonging to public service corporations, and for the establishment of a Tax Commission. However, the amendment, when submitted to the people, failed of ratification.

Nevertheless, by constitutional amendment, initiated by Act 168 of 1916, the State Board of Appraisers was abolished and the Board of State Affairs created. By Act 140 of 1916 the powers of the State Board of Appraisers and the State Board of Equalization were vested in the Board of State Affairs. Finally, by Article X, Section 2, of the Constitution of 1921, the Board of State Affairs was called the Louisiana Tax Commission, which retained all of the powers of the former body subject to the control of the legislature.

There is no reason to examine the pertinent provisions of the Administrative Code of 1940 relative to the problems considered here, as the Supreme Court of Louisiana declared it to be unconstitutional, apparently in its entirety, on the theory that the provisions contained therein were interwoven inextricably with the ill-starred reorganization amendment.

In summary, then, it may be said that the Louisiana Tax

3. This terminology is synonymous with "public utilities," and neither is employed by La. Act 140 of 1916, Section 10, paragraph 2, as amended [Dart's Stats. (1939) § 8321], which is the basic statute today for assessing property belonging to "utilities."

4. The State Board of Equalization was vested with authority to equalize assessments of all property in the state except as provided by Article 226 of the Constitution of 1898, which was concerned with the authority of the State Board of Appraisers to value property belonging to certain "utilities." La. Act 182 of 1906 amended and reenacted by La. Act 220 of 1910. Thus, the powers of the State Board of Equalization need not be considered here.

5. In Title IV of La. Act 47 of 1940 [Dart's Stats. (Supp. 1941) § 7789-26], more commonly referred to as the Administrative Code, there is provision for the abolition of the Louisiana Tax Commission, and in Section 1 of this Title specific provision is made for the transfer to the Department of Revenue of the duty or function of making "the original assessment for taxation of all property owned by any public utility company and such other property as the Louisiana Tax Commission has heretofore been authorized to make." Cf. this language with the pertinent part of paragraph 2 of Section 10 in La. Act 140 of 1916 [Dart's Stats. (1939) § 8321]. A recent decision by the Supreme Court of Louisiana, as yet unreported, held La. Act 47 of 1940 [Dart's Stats. (Supp. 1940) §§ 7789.6-7789.157] and La. Act 48 of 1940 [Dart's Stats. (Supp. 1941) §§ 6631.5-6631.112] to be unconstitutional. Graham v. Jones, 198 La. 507, 3 So. (2d) 761 (1941), held the reorganization amendment, La. Act 384 of 1940, to be unconstitutional.
Commission replaced the Board of State Affairs, assuming its powers, and that that Board, in its turn, had been the successor to the powers exercised by the State Board of Appraisers. Thus, it is necessary to consider opinions, reports, statutory and case law pertaining to the assessment and valuation of property belonging to the so-called “public utilities” in the state from the time of the creation of the State Board of Appraisers by the Constitution of 1898.

**Jurisdictional Limitations on the Power of Direct Assessment by the Louisiana Tax Commission**

Unlike the constitutional and statutory provisions regarding the Public Service Commission and its powers, the general property tax statutes regarding utilities, for the most part, seem to avoid studiously the use of the words “public utilities” or “public service corporations.” Nowhere is there an express statutory or constitutional provision to the effect that the property of all public utilities be assessed directly by the State Board of Appraisers. The argument has been advanced to the effect that Section 10 of Act 140 of 1916 gives to the Tax Commission authority to assess or value all property in the state for state purposes and that these valuations are to be accepted as final for local purposes. Further, that this means that the Commission has authority to value all property in the state, whether it be public utility or other property. If this argument is accepted it renders nugatory the subsequent discussion. However, while the writer admits that the ultimate authority to assess all property in the state is vested in the Commission, the preliminary valuations are within the province of the local assessors subject to final determination by the Tax Commission. But the local assessors are concerned in no way with the valuation or assessment of the so-called public utility properties. If we accept the interpretation, we must ignore all of the statutory provisions relative to the duties and powers of the local assessors. Too, it is obvious that this interpretation has not been accepted else why has

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7. La. Act 140 of 1916, § 1 [Dart's Stats. (1939) § 8313]. Director General of Railways v. Hughes, Tax Collector, 157 La. 8, 101 So. 728 (1924). A ruling by the Supreme Court of Louisiana in the unreported case of Orleans-Kenner Electric Railway Co. v. State Board of Appraisers, Supreme Court Docket No. 22,378 (1917) authorized the Board of State Affairs to substitute for the State Board of Appraisers. This ruling is cited in the subsequent annual reports by the Board of State Affairs as authority for exercising powers formerly vested in the State Board of Appraisers.

8. The Public Service Commission was formerly called the Railroad Commission, and its regulatory powers were limited to certain specific businesses. La. Const. of 1898, Art. 226. But in La. Const. of 1913, Art. VI, § 4, there is in addition to specific categories the broad language “...and other public utilities.” For similar language see La. Act 19 of 1934 (2 E.S.) [Dart's Stats. (1939) §§ 7917.1-7917.2] and La. Act 20 of 1934 (2 E.S.) [Dart's Stats. (1939) §§ 7917.3-7917.7]; La. Act 108 of 1921 (E.S.) as amended [Dart's Stats. (1939) § 7918].

9. La. Const. of 1898, Art. 226, sets out specifically the types of business to be assessed directly by the State Board of Appraisers. La. Const. of 1913, Art. 226, merely creates the Board of State Affairs and La. Const. of 1921, Art. X, § 2 states that the latter board “hereafter shall be called the Louisiana Tax Commission.”
lic utilities is assessable directly by the Louisiana Tax Commission. Yet, since the creation of the State Board of Appraisers, this is a rule substantiated by the language of certain authorities. One or two isolated statutes on property assessment and taxation speak of the public service corporations in the state, but the basic or pivotal statute granting the Louisiana Tax Commission authority to initiate the assessment of property belonging to the so-called public utilities fails to use this all-embracing language. Rather does this statute, Act 140 of 1916, Section 10, paragraph 2, list categorically those businesses which are to be assessed or valued directly by the Louisiana Tax Commission. While all of these can be classified as public service companies, and are so classified by the Louisiana Tax Commission, there is no recognition given the existence of public utilities other than those specifically mentioned in the statute.

The legislature seen fit to amend the act in 1938, adding to the list of the so-called public utilities, if the Commission were vested already with the power to assess such property directly. Act X, § 12 of the Constitution of 1921, substantiates our argument, for a fair interpretation of this section would be that the local assessors value and list all real estate and then submit these valuations to the Louisiana Tax Commission. It is significant that this interpretation was flatly rejected in G. R. McKinney Co. v. Louisiana Tax Commission, 150 So. 452 (La. App. 1933).

10. Report of Louisiana Board of State Affairs (1918-1920) in the legislative recommendations declares "As a matter of fact, the valuation and assessment of all public service corporations is directly under the control of this Board." In its report to the Constitutional Convention of 1921, the Assessment and Taxation Commission, created by La. Act 222 of 1920, stated "The Constitution of 1898 created a State Board of Appraisers whose duty it was to value and assess the property of all public service corporations. The local assessors had no authority after the creation of the Board of Appraisers to value or assess property of any public service corporation."

11. See La. Act 163 of 1924 [Dart's Stats. (1939) § 8372] which speaks of public utility bonds; First National Bank v. Louisiana Tax Commission, 175 La. 119, 143 So. 23 (1932) stated that this act is so palpably unconstitutional that it has never been enforced. La. Act 120 of 1918 [Dart's Stats. (1939) §§ 8419-8422]. This possibly is superseded by Act 18 of 1934 (2 E.S.) [Dart's Stats. (1939) §§ 8324.1-8324.9]. Cf. La. Act 26 of 1935 (2 E.S.), La. Act 116 of 1940 [Dart's Stats. (Supp. 1941) §§ 8805.1-8805.18] providing for the so-called public utilities license tax.


13. Louisiana Tax Commission, Assessment Suggestions to Assessors and Police Juries (Feb. 1942) Pt. 4, p. 29. See Bonbright, Public Utilities and National Powers (1940) 2-3: "Most of these utilities fall into one of two major classes: (1) the various transportation agencies; and (2) the plants supplying some form of service through a permanent physical connection with the customer's premises." The author then outlines the characteristics that distinguish utilities from other forms of businesses:

I. Special privileges not granted to men engaged in so-called private business are (a) eminent domain, (b) permission to use streets, et cetera for pipes, rails, et cetera, (c) marked degree of protection from encroachment on their territories by rival companies or rival public plants (until recently, at least).

II. But they must (a) render adequate service, (b) at reasonable rates, (c) without unjust discrimination among actual or potential customers.
cifically enumerated or to the possibility that new types of public utilities might come into existence.14

If, then, a business, declared by statute to be a public utility, cannot be forced into one of the categories set out by this statute,15 it follows that the assessment of its property is not within the purview of the section providing for direct assessment by the Louisiana Tax Commission. Although one must read all statutes or sections of statutes which are in pari materia with this act, until there is an amendment to the act itself or until there is some constitutional provision regarding the matter, it is difficult to see how it can be said that the Louisiana Tax Commission has the power to assess directly the property belonging to all public utilities. For it cannot be disputed that the Louisiana Tax Commission is made a body of assessors by Act 140 of 1916, Section 10, paragraph 2, with regard to certain "public utilities" and, as such, is like other assessors in the state who are "statute officers" and "the statutes of the State levying taxes, and directing assessment of the objects liable to taxation, and defining the duties of assessors, are at once the source and measure of the authority of those officers."16 (Italics supplied.)

Before considering individually each category as set out in what might be called the direct assessment clause of Act 140 of 1916,17 both as regards the administrative duties or functions of the Louisiana Tax Commission and its methods of assessing the property falling into such categories, let us note that by statutory enactment municipalities and parishes have been given the power to own, operate, lease, construct, et cetera, certain utilities which

14. Toll bridges, toll roads, public buses, steamship lines, radio broadcasting and television companies have been classified as public utilities. Bonbright, op. cit. supra note 13, at 2. For purposes of the two per cent. public utilities license tax, "motor bus lines" and "boat or pocket lines" are declared public utilities. La. Act 26 of 1935 (2 E.S.), § 4, as amended and reenacted by La. Act 51 of 1935 (4 E.S.), La. Act 182 of 1938 [Dart's Stats. (Supp. 1941) § 8905.4]. But it is obvious immediately that these "public utilities" are without the scope of the pertinent part of Section 10, paragraph 2, of Act 140 of 1916, as amended and reenacted [Dart's Stats. (1939) § 8321].

15. As especially amended and reenacted by La. Act 10 of 1915 (E.S.) declaring sugar refineries to be public utilities was held to be unconstitutional in McFarland, Supervisor of Public Accounts of Louisiana v. American Sugar Refining Company, 241 U.S. 79, 36 S.Ct. 498, 60 L.Ed. 899 (1916).

16. This language was that of the court in State ex rel. La. Imp. Co. v. Board of Assessors, 111 La. 982, 36 So. 91 (1902), and followed in Louisiana and A. R. Co. v. Bailey, 115 La. 929, 40 So. 358 (1905). Such officers are created by the constitution, but at the same time they are dependent upon statutes which elaborate upon their powers within the constitutional limitations.

17. Supra note 15.
have been interpreted as falling within the scope of the direct
assessment clause. The Constitution of 1921, in Article X, Section 4, paragraph 1, provides that all public
property is exempt from taxation, and this comprehends an elec-
tric lighting plant, water-works, et cetera, owned by a local unit
of government. It has been held that the property belonging to
an electric lighting and water plant and distribution system,
owned and operated by a municipality, continued to be tax ex-
empt for the year in which it was sold to a private corporation,
when it belonged to the municipality on tax day, that is, January
1st, of that year. Along the same line of reasoning, property ac-
quired after January 1st of the year, for which taxes are assessed,
by a person, association or corporation whose property is exempt
from taxation, is not exempt for that year, the status of such
property being determinable as of January 1st. When asked
whether municipalities were liable for taxes on certain utilities
owned and operated by them, the Attorney General refused to
answer, giving as his reason the fact that the Auditor of Public
Accounts had decreed they were, probably on the ground that the
property was owned previously by a private individual in the
same year for which the taxes were demanded.

Since the state and its political subdivisions cannot tax such
publicly-owned property, we are concerned here only with pri-

18. La. Act 248 of 1912 [Dart's Stats. (1939) §§ 5969-5975]; La. Act 34 of
(1939) §§ 7948-7963]; La. Act 70 of 1921 (E.S.) [Dart's Stats. (1939) §§ 7965-
7968]; La. Act 53 of 1924 [Dart's Stats. (1939) § 7954]; La. Act 53 of 1926
[Dart's Stats. (1939) §§ 7970-7976]; La. Act 247 of 1926 [Dart's Stats. (1939)
§ 7954]; La. Act 81 of 1934 [Dart's Stats. (1939) §§ 6011.1-6011.5]; La. Act 49 of
(1939) §§ 7979.1-7979.14].
19. La. Act 111 of 1900 [Dart's Stats. (1939) §§ 7939-7947].
20. The test is ownership and not the use of the property. Thus, if a
local unit of government leases the property to a private person, association
or corporation, such property should be tax exempt.
21. Gulf Public Service Co. v. Louisiana Tax Commission, 167 La. 757,
120 So. 286 (1929). See also New Orleans Bank & Trust Co. v. City of New
Orleans, 176 La. 946, 147 So. 42 (1933).
Bank & Trust Co. v. Board of Assessors, 129 La. 1091, 57 So. 528 (1912). But
of Gachet v. New Orleans, 52 La. Ann. 814, 27 So. 348 (1900). Here a piece of
land passed to public ownership after January 1 of the year for which taxes
were demanded, and the court held such property tax exempt on the ground
that it was publicly owned before taxes were due and exigible. Cf. also
Opinions of Attorney General (1934-36) 1164; (1932-34) 779, 892. Property is
tax exempt which is acquired by the United States after January 1, but
before the assessment is made, or before the assessment rolls are filed.
vately-owned utilities that fall within the categories of the direct assessment clause. But, for jurisdictional purposes, at least, we must determine whether the Louisiana Tax Commission is called upon to act in an administrative capacity—to value the tax-exempt property for listing on the assessment rolls. The Constitution provides that all real estate, taxable as well as exempt, must be assessed for listing purposes and one case held that it was the duty of the State Board of Appraisers to make a valuation of all of the property employed in the railway business, even though some was ascertained to be exempt from taxation. Such property was valued subsequently by the State Board of Appraisers as the decision directed.

While the constitutional provision regarding the assessment of real estate, taxable as well as exempt, undoubtedly covers real estate owned by the tax-exempt utilities, there is no statutory or constitutional provision which envisages listing on the assessment rolls property other than real estate belonging to the tax-exempt utilities. The Tax Commission does not value the personal property belonging to these utilities, but the real estate is valued. However, despite the fact that tax-exempt realty is required to be listed on the assessment rolls, the writer has been told that, practically, this is not done in all parishes; that the listing of this property on the assessment rolls is a matter relegated to the discretion of the parish authorities. Article 226 of the Constitution of 1898 divested the local assessors of the power to assess the property of railway, telephone, 

26. Report of the State Board of Appraisers, 1906: "Prior to the present year the Board of Appraisers made no evaluation of those railways or parts of railways which are exempt from taxation under the provision of the Constitution of 1898 and the amendment of 1904. This was because the Board felt that its duty was limited to 'assessing for taxation' certain property named in the law creating the Board. On December 4th, 1904, however, the State Supreme Court held in the case of the Louisiana and Arkansas Railway Co. v. Bailey, Tax Collector of Winn Parish, that it was the duty of the Board to make a valuation of all of the property employed in the railway business, even though it was ascertained to be exempt from taxation.'"
27. La. Act 140 of 1916, § 10, paragraph 2, as amended [Dart's Stats. (1939) § 8321] requires the Louisiana Tax Commission to assess the so-called utilities "for all purposes." The writer suggests that this could be interpreted to cover assessment for listing purposes where property is exempt. See for an interpretation of the quoted language Opinions of the Attorney General (1916-1918) 307 and 316. See also Louisiana Tax Commission Assessment Suggestions to the Assessors and Police Jurors (Feb. 1942) Pt. 4, p. 29.
telegraph, sleeping car and express businesses, and vested it in a centralized body, wherein it has remained. Subsequent statutes elaborated upon this power but the most important provisions, from an administrative point of view, are to be found in Act 140 of 1916. The concept of "public utility business" has been enlarged by way of statutory amendment, making the pertinent part of Section 10, paragraph 2, of the act read as follows:

"... the actual cash valuation and assessment of gas and oil pipe lines, electrical transmission lines, water and gas distribution systems, railway, telegraph, telephone, sleeping car and express business throughout the State of Louisiana, shall be fixed and assessed by this Board (Louisiana Tax Commission) for all purposes."

This broad categoric language, if taken at face value, does not imply, necessarily, that the property to be so assessed should be, characteristically or distinctively, public utility property; nor are the administrative authorities in accord in their interpretation of this language. Usually this section is given a narrow interpretation, which presupposes the presence of elements essential to classifying the different kinds of "business" as public utilities or public service corporations; that each "business" is complete within itself and not just another adjunct or incident to another business. Thus, railway property belonging to a sawmill concern and used solely for logging purposes has been said to be assessable by the local authorities and not directly by the Commission or its predecessors. If railway cars belonging to a sugar refinery are used only as a plant facility and not as common carriers, they are assessable by the local authorities. But if a railway, owned by a lumber company and used by it as a plant facility, is at the same time leased to an operating railway, it is assessable directly by the Board of State Affairs (Louisiana Tax Commission). Then, too, private telephone lines, erected by per-

29. This centralized body is now called the Louisiana Tax Commission. La. Const. of 1921, Art. X, § 2.
30. La. Act 161 of 1938 [Dart's Stats. (1939) § 8321] amended and re-enacted the direct assessment clause by adding the first three categories as listed.
32. Opinions of Attorney General (1908-1910) 319; Opinions of Attorney General (1914-1916) 238. In its Suggestions to Assessors for all years the Louisiana Tax Commission declares that the local assessors must assess logging railways.
34. Opinions of Attorney General (1915-1918) 308.
sons for their own convenience and for the use of which no tolls are charged, are assessed by the local authorities. Likewise telephone cooperatives are assessed locally. ⑤

On the other hand, however, the writer was told that the Tax Commission initiated the assessment of a logging railroad because it was a standard gauge railroad,⑥ despite the foregoing authority to the contrary. We find still another incongruity in the fact that the Commission values directly the rolling stock belonging to such taxpayers, as, for instance, the Cloverland Dairy in New Orleans, regardless of the fact that this property is not used for purposes of common carriage, but only to facilitate the dairy business. Too, the Commission initiates the assessment of ice plants belonging to those utilities it considers to be within its particular jurisdiction.⑦ What is the authority for these undertakings? It is purely a matter of expediency, and the administrative authorities frankly state that if such “authority” were ever questioned, the “power” to assess such property originally would be relinquished immediately to the local assessors.

When the State Board of Appraisers was created, it was vested expressly with the power to assess property belonging to and employed in the conduct of certain businesses.⑧ The Attorney General has stated, with respect to the extent of this power, that “property belonging to corporations, associations and individuals, not used or employed in railway [et cetera] business should be assessed by the several local assessors and your Board should only assess such property as is employed or used in the business.”⑨

Here the Attorney General states that the word “employed,” as used in the statutory provision, which sets up the authority of the

⑤. Louisiana Tax Commission, Suggestions to Assessors (Feb. 1942) 26. The writer was told by the Tax Commission that electric cooperatives were assessed locally. But see La. Act 266 of 1940, Section 24 [Dart’s Stats. (Supp. 1941) 1085.24] which provides that the properties of such cooperatives is to be valued by the assessing authorities for state purposes at ten per cent of actual value.

⑥. This was the Ouachita & N.W. Ry. which recently abandoned its track, having been given permission to do so by the Public Service Commission.

⑦. Utility Schedule No. 7 (6 M 1-42 11580) of the annual reports of the Tax Commission by electric, gas and water “utilities” requires them to return as property the “ice machinery; and all other machinery and equipment incidental to the operation of your electric, gas or water system.”


board to assess directly property belonging to railway, telephone, telegraph, sleeping car and express businesses cannot mean "engaged" but means "used."

Although the word "employed" is not carried over into the pertinent part of Act 140 of 1916, the foregoing, in the main, substantiates the viewpoint of the authorities today. As an example, we may advert to the fact that the Tax Commission considers itself without jurisdiction to assess non-operative realty belonging to a railroad. Whether the change in verbiage in the act was intended to affect jurisdiction the writer is unable to say. However, the administrative authorities apparently have not considered this omission of language as affecting the accepted jurisdictional limitations of the power of original or direct assessment. In fact, jurisdiction over property not used in a "public utility" business has been assumed, the administrative authorities say, only for the purpose of expediting assessments.

Disregarding what is done practically, the logical conclusions would seem to be that if the generic property is used solely to facilitate a business not classifiable as a public utility, such property should not be assessed directly by the Louisiana Tax Commission, but by the local assessors, in line with the assessment of other property in the state. It is equally true that any property belonging to one of the businesses falling within the categories but not used or employed in the conduct of the business proper, should be assessed locally. To conclude, where property belonging to one of the kinds of business enumerated in the act, is, of itself, utility property, to determine jurisdiction to assess, the test of being "used" or being merely an adjunct or incident to the business would be inapplicable, as such property, having elements necessary for classification as public utility property, should be considered to be within the province of the Tax Commission to assess directly.

Although it is impossible to state definitively that the terminology "public utility" or "public service" has been read into the direct assessment clause of Act 140 of 1916, as a modification of the categories, what authority there is on the subject and the

40. As amended and reenacted supra note 12.
41. In elaboration upon this statement we might say that all taxable property, not falling within what we have termed the direct assessment clause of Section 10, paragraph 2, of Act 140 of 1916, as amended and reenacted, is assessed by the parish assessors with a kind of supervisory jurisdiction in the Louisiana Tax Commission over such assessments. Section 10 of Act 140 of 1916 as amended and re-enacted [Dart's Stats. (1939) § 8321].
actual administration by the Tax Commission would seem to substantiate the premise.\textsuperscript{42} However, we might examine, for the moment, the concept "business" before proceeding to a special consideration of the categories in an effort to determine criteria by which they are adjudged public utilities and, as such, within the jurisdiction of the Louisiana Tax Commission to assess directly. "Business," as used in the pertinent part of Act 140 of 1916, Section 10, paragraph 2, has been translated into terms of property for purposes of ad valorem taxation. But it has not been interpreted to comprehend such intangible elements as good will, possible future earnings, et cetera. In some of the annual reports filed by the utilities with the Commission, information is elicited under a column titled "Intangibles."\textsuperscript{43} Certainly this language might include "good will" and the like, but at the same time the utility of such a column is negligible, for the information sought is for purposes of formulating financial statements and not for purposes of reporting property. In theory as well as practice the administrative authorities do not consider good will, et cetera, to be elements of property taxable under the ad valorem property tax statutes of the state. If "good will" is conceded as an element of property and is not taxed, the constitutionality of this "exemption" may be questioned.\textsuperscript{44} The subsequent remarks, of necessity, will not attempt to cope with this kind of problem except in the more obvious instances, for we feel that it is essential to discuss primarily the two major problems confronting us, namely, jurisdiction to assess and methods or elements in the methods used for determining the "actual cash value" of utility property, and that it is equally necessary to avoid a deviation wherever possible.

It would be well to bear in mind throughout the following discussion the fact that in the direct assessment clause the first three categories are concrete. They refer to particular property. Only the last five categories are modified by the term "business," which implies that all property used in the conduct of the "business" should be assessed directly by the Commission. This clumsy phraseology is inexcusable, for it allows for specious interpretation by the authorities and justifiable criticism by the commentator.

Nowhere in the field of ad valorem property taxation is the

\textsuperscript{42} Louisiana Tax Commission, Suggestions to Assessors and Police Juries (Feb. 1942) 29.

\textsuperscript{43} Annual Report of Telephone and Telegraph Companies, Financial Statement, Schedule No. 2 (500 1-42 11380).

\textsuperscript{44} La. Const. of 1921, Art. X, \S 4.
terminology "public utilities" adequately defined. Some license tax statutes have declared certain enterprises falling within the categories of the direct assessment clause to be public utilities, with a formulation of criteria by which the utilities may be distinguished from organizations similar to but not engaged in utility business. However, there is no gainsaying but that in the field of ad valorem property assessment and taxation of public utilities there should have been developed a sui generis body of law. However, since this is not the case, inadequacy of definition forces us to search elsewhere to discover standards by which we are able to determine what are public utilities.

**Gas and Oil Pipe Lines**

In its "Suggestions to Assessors and Parish Boards of Equalization," the Louisiana Tax Commission in 1939, at page 23, declared:

"Under the provisions of Act 161 of 1938, the Louisiana Tax Commission is authorized and empowered to assess directly gas and oil pipe lines. For purposes of administration that statute has been interpreted to mean 'common carrier' lines. All property falling under this classification, as well as all properties used and connected therewith, both real and personal, will be assessed by the Tax Commission beginning with the calendar year 1939. When the assessments have been completed same will be certified to the various assessors throughout the State in a manner similar to certification of other Public Service valuation."

Further,

"There are in existence in this State oil and gas pipe lines which are not classified as 'common carrier' lines and which will be assessed by the local taxing authorities."

Since the Tax Commission admits searching through the records of the Public Service Commission to discover utilities supposedly within its jurisdiction to assess directly, the writer feels justified in resorting to the statutes in the field of rate regulation of public utilities by the Public Service Commission in quest of criteria for measuring the categorical "gas and oil pipe lines" of the direct assessment clause. The statutes to be considered here do not use the terminology "public utilities," "public service" or 45. La. Act 28 of 1935 (2 E.S.) § 4, as amended and re-enacted by La. Act 31 of 1935 (4 E.S.), La. Acts 182 and 272 of 1938 (Dart's Stats. (Supp. 1941) § 8805.4).
“quasi public” corporations; rather, they set standards for the determination of "common carrier" pipe lines.46 Thus, Act 36 of 1906 provides that "all pipe lines through which gases, oil or other liquids are conveyed from one point in the State to another point in the State, for a consideration, are hereby declared to be common carriers," and, as such, are subject to regulation by the Railroad Commission of Louisiana.47 Another act of 1906, namely, No. 39, gives to all corporations, domestic and foreign, rights of expropriation for building and constructing pipe lines for the transportation of oil and gas or either. But, before such rights may be exercised, the corporation must file with the Secretary of State a resolution by its Board of Directors, duly certified under its corporate seal, consenting and agreeing that the corporation shall become a common carrier of oil and gas, or either, that is, it must consent to transport the product for which it has declared itself a common carrier for all persons and corporations up to the capacity of its pipe lines without discrimination. Act 76 of 1920 amended Act 36 of 1906 only with regard to crude petroleum pipe lines, declaring these to be “common carriers,” in the following language:

“... this Act shall include all persons, firms or corporations engaged in the transportation of crude petroleum as ‘common carriers’ for hire, or upon which proper showing, may be legally held to be ‘common carriers’ from the nature of the business conducted or from the manner in which such business is carried on.”

Rights of expropriation are given such persons, firms and corporations without any preliminary requirement of a corporate resolution (or declaration of any kind), as provided in Act 39 of 1906.

The cases interpreting the foregoing statutes, for the most part, deal with the right of the Public Service Commission to investigate pipe line businesses in order to discover whether they fall within its jurisdiction to regulate.48 For our purposes, these

46. The statutes listed in supra note 45 do not state expressly that the “pipe lines” comprehended by them are “common carriers;” while the statutes considered in the text, relating to the powers of the Public Service Commission, use the terminology “common carriers.”

47. The Railroad Commission was superseded by the Louisiana Public Service Commission. La. Const. of 1921, Art. VI, § 9.

48. The power of the Public Service Commission to investigate such a business for regulatory purposes is given by statutes other than those cited in this paper. But the latter are considered in the following cases: Standard Oil Co. v. Louisiana Public Service Commission, 154 La. 657, 97 So. 859 (1923); Interstate Natural Gas Co., Inc. v. Louisiana Public Service Commission, 33 F. Supp. 50, 34 F. Supp. 980 (E.D. La. 1940).
cases are of some material value because of the fact that they are wont to use the terms "common carriers" and "public utilities" synonymously. By way of correlation, this seems to be the position adopted by the Louisiana Tax Commission with regard to gas and oil pipe lines.

The criteria, then, elucidated in the foregoing acts give substance to the interpretation of Act 161 of 1938 by the Commission, in that they provide the means through which we are able to judge whether a gas and oil pipe line falls within the scope of the direct assessment clause. Although there is no absolute veracity in a statement to the effect that all common carriers are public utilities, still it is clearly correct to state that some common carriers might be classified as public utilities. If a pipe line "business" holds itself out to the public for hire in the transportation of oil or gas in return for which it is the recipient of certain rights as well as certain regulatory measures not accorded everyone, it has labelled itself a public servant, in effect, or to put it in the terminology of this paper, a public utility. So the interpretation given Act 161 of 1938 by the Louisiana Tax Commission regarding oil and gas pipe lines is not incongruous with a major premise that the power of direct assessment by that body is exercised only with regard to that type of "business" classifiable as a public utility.

The direct assessment clause of Act 140 of 1916 apparently comprehends both classes of public utilities as defined by Bonbright, (1) the various transportation agencies and (2) the plants supplying some form of service through a permanent physical connection with the customer's premises. The writer suggests, in the light of previous discussion, that insofar as the law of this state is concerned, the former class of public utilities should be defined by applying the standards which measure "common carriers." For there would be no logic in an interpretation which dictated that only some of the transportation businesses falling within the categories of the clause be measured in terms of common carriers. So, in order to achieve some sort of reason-

49. See Interstate Natural Gas Co., Inc. v. Louisiana Public Service Commission, 33 F. Supp. 50, 34 F. Supp. 980 (E.D. La. 1940). Cf. The Pipe Line Cases, 234 U.S. 548, 34 S. Ct. 956, 58 L.Ed. 1459 (1914). A federal statute providing for the regulation of pipe lines in interstate commerce required classification as common carriers as the intermediate step to classification as public utilities. It was held that the statute applied where the pipe lines were carriers of what was equivalent to their own oil, by virtue of the fact that the original owners agreed, by contract, to sell at prices set by the pipe line companies.

50. Supra note 13.
able pattern, an interpretation of the categories in terms of common carriers will be utilized wherever applicable.

Some of the statutes defining or setting up criteria for determining common carriers are confusing and apparently irreconcilable with the actual administration by the authorities. Before proceeding to a consideration of these we might state that, relatively speaking, Act 39 of 1906 is not such a statute; it does not provide a definitive criterion to be considered in determining whether gas and oil pipe lines are common carriers. By this act all corporations comprehended therein, with the exception of those engaged in the transportation of crude petroleum, must file a corporate resolution with the Secretary of State to the effect that they desire classification as common carriers in order to exercise rights of expropriation. But the filing of this resolution is, by the very language of this statute, a condition precedent only for the purpose of acquiring these rights and does not mean that, unless this resolution is filed, the pipe line company is not a common carrier. It is expressly stated by Act 36 of 1906, as amended, 51 that the test for ascertaining which are common carrier pipe lines is to determine whether they are employed for the purpose of transporting oil or gas from one point in the state to another. Then we can conclude that some gas and oil pipe lines may be common carriers and are assessed directly by the Commission, albeit these cannot exercise rights of expropriation, for the laying of their pipes. 52

It must be admitted that the attempted correlation of the law applicable to the assessment of utilities with the rate regulation statutes breaks down when we consider pipe lines which are purely interstate in character. By the very language of these statutes the Public Service Commission has no jurisdiction to regulate this type of pipe line. 53 However, for the purpose of this paper, this collapse of analogous reasoning seems unimportant at this point, for surely no one can deny that there is as much, if not more, justification for direct assessment, by a centralized body, of an interstate business as is contemplated here. It has been held that a state could levy a property tax on pipe lines having a situs within the state, although such pipe lines were

52. There is nothing in the acts which would preclude the purchase of rights of way other than by exercising rights of expropriation and the writer suggests that these pipe lines may be common carriers nonetheless.
53. La. Act 36 of 1906, § 1, as amended by La. Act 76 of 1920, § 2 [Dart's Stats. (1939) § 7980].
used in interstate commerce. \textsuperscript{54} Like the intrastate pipe line here-
tofore discussed, these interstate lines should have the attributes
necessary for classification as common carriers in accordance with
the Commission's interpretation of the category "gas and oil pipe
lines." Therefore it would seem that the utilization of the test
previously set forth, for determining whether intrastate pipe lines
are common carriers, would be in order here.

	extit{Electrical Transmission Lines}

The direct assessment clause sets forth as the next category
"electrical transmission lines." The administrative authorities
consider this category to comprehend electricity producing plants
and distribution systems, whose business is purely local in nature,
i.e., falling within the second class of utilities defined by Bon-
bright, \textsuperscript{55} and selling its own electricity to customers with whose
premises it maintains some sort of permanent connection. Ade-
quate provision has been made by statute for the regulation by
the Public Service Commission, of such utilities, precisely de-
scribed as "gas, electric light, heat, power, water-works or other
local public utility." \textsuperscript{56} But the same is not true of the statutes de-
fining the jurisdiction of the Tax Commission or its predecessors
with regard to the power of initiating the assessments of property
belonging to these utilities. It is obvious from the outset that an
assertion to the effect that the direct assessment clause compre-
hends all local utilities is nothing but a spurious interpretation
of language. The cardinal point to be made here is that we cannot
fail to question any interpretation which states or even assumes
that the language "electrical transmission lines" refers to more
than that property necessary to and used or connected with the
transmission or distribution of electricity, as wires, poles, et cetera.
Certainly an electricity producing plant is not the same as "elec-
trical transmission lines" or even part of that category. The latter
are merely the means through which electricity is conveyed to
the consumer. If the Louisiana Tax Commission assumes that it
has no authority to value property used for producing oil and is
confined to assessing directly only the oil pipe lines and the prop-
erty immediately incident thereto, it seems only logical to limit
the category "electrical transmission lines" in the same way. In
other words, it would seem that the Tax Commission transcends

\textsuperscript{54} Miller County Highway & Bridge Dist. v. Standard Pipe Line Co., 19
441, 72 L.Ed. 831, 58 A.L.R. 126 (1928).

\textsuperscript{55} Supra note 13.

\textsuperscript{56} La. Act 19 of 1934 (2 E.S.) § 1 [Dart's Stats. (1939) § 7917.1].
its authority in assessing directly property other than that necessary to the transmission or even the local distribution of electricity.

The purport of the phrase "electrical transmission lines" is carriage or distribution of electricity. While there is logic in the Attorney General's opinion which stated that electricity is not such a material substance as to be classified as property and so assessed, the fact remains that it is conveyed to the consumer in a manner similar to that employed in the carriage of oil or gas. Unlike its interpretation of the category "gas and oil pipe lines" the Commission has not limited this category to a comprehension of the electrical transmission lines engaged in business as common carriers. The writer doubts whether many of the high tension electrical transmission lines running throughout the state are common carriers of electricity. If any are used for such a purpose, it is essential that we consider them, and presumably some must be by virtue of the fact that there are statutes concerned with common carrier hydro-electric transmission line companies.

The criteria for measuring which hydro-electric transmission lines are common carriers may be found in Act 268 of 1916 which deals with domestic corporations. Unlike Act 39 of 1906, relating to gas and oil pipe lines, the language of Section 7 of the former statute is to the effect "That no such corporation shall have the power to exercise any right of expropriation herein conferred, and [italics supplied] no such corporation shall be considered a common carrier" until it shall have filed with the Secretary of State, the same type of resolution required of oil and gas pipe line companies. But by this section it would seem that the resolution is a condition precedent to classification as a common carrier, and not merely to the exercise of rights of expropriation.

Act 110 of 1924, as amended and reenacted, is pertinent to the present discussion, for it provides that corporations, whether domestic or foreign, organized for the purpose of developing and transmitting electricity, are given rights of expropriation; but they must construct, operate and maintain the buildings, transmission lines, et cetera, so as not to be dangerous to persons or property, or to interfere with the wires of other wire-using com-

panies. This act is not predicated upon the fulfillment of the condition precedent, namely, the filing of a corporate resolution with the Secretary of State, declaring that such corporation seeks classification as a common carrier. But at the same time there is nothing in this act which would exclude or dispense with the necessity that hydro-electric transmission line companies fulfill the condition before rights of expropriation are exercised. While the right of expropriation is not an ultimate test for determining which businesses are common carriers or public utilities, it is a characteristic of certain types of organizations discussed in this paper.\textsuperscript{60}

The foregoing statutory provisions, then, define only hydro-electrical transmission lines in terms of common carriers, but there is nothing in the language of these acts which would require that all electrical transmission lines or even hydro-electric transmission lines be deemed common carriers in order to fall within the scope of the direct assessment clause. In fact there has never been a case nor an administrative interpretation limiting in any way the categorical "electrical transmission lines." So, it would make no difference insofar as concerns the power of the Tax Commission to assess directly "electrical transmission lines" that none fulfills the qualifications of common carriers. Certainly it should suffice that they are public utility properties of one type or another.

Applying the interpretation of the direct assessment clause set out earlier in this paper, if any of these high tension electrical transmission lines are used solely as an adjunct of a business not classifiable as a public utility, there is no reason for direct assessment by the Tax Commission, for such lines are not of a public service character. And, in conclusion we may say that we refuse to accept an interpretation which considers this category to comprehend more than that property necessary to the transmission and/or distribution of electricity, whether engaged in such a pursuit as a common carrier or merely as a vendor of the commodity.

\textbf{Water and Gas Distribution Systems}

The third category listed is "water and gas distribution systems." The Commission has interpreted this phrase to comprehend property belonging to the gas and water producing plants as well as that property necessary to the distribution of their products. The assumption of jurisdiction in the face of the lan-\textsuperscript{60} Supra note 13.
language "distribution systems" would seem to go beyond the intendment of the legislators. The writer suggests that the administrative authorities here again exceed their authority, for only specious rationalization would permit an interpretation to include in this category gas and water producing plants when the statute expressly modifies "water and gas systems" by using the word "distribution."

Since there are no statutory provisions for classifying gas distribution systems as common carriers, we are rescued from the tedium of attempting to justify or rationalize the legislative word, as, for instance, in the case of irrigation canal systems which should be comprehended by the categoric "water distribution systems." The same statute which establishes criteria defining the common carrier hydro-electric transmission lines has corresponding provisions with regard to domestic corporations, organized "with the power to build and construct canals for irrigation, transportation of freight and passengers." In scrutinizing the direct assessment clause it seems only logical to exclude therefrom canals used in the transportation of freight and passengers as well as navigation canals, and to confine the discussion here to a consideration of irrigation canal systems; for none of the former comprehends a distribution of water. While the law has made provision for classification as common carriers those canal systems used for navigation purposes and for the transportation of freight and passengers, the writer suggests that these should not be considered within the scope of the direct assessment clause, because the very precise language—water and gas distribution systems—would exclude them. Should the question arise, through spurious reasoning it might be held that the categoric "water and gas distribution systems," if interpreted to cover irrigation canals, is sufficiently broad to comprehend a canal system used for transportation of passengers or freight or for navigation purposes, and thus within the province of the Tax Commission to assess directly.

So far as this paper is concerned, however, we feel that it is justifiable to confine ourselves to a discussion of irrigation canal systems as being, possibly, within the jurisdiction of the Tax Commission to assess directly. These canal systems are deemed common carriers by Act 268 of 1916, if the conditions set out by that act are fulfilled. It cannot be denied that this is specious

reasoning to classify as a common carrier a corporation engaged in selling its own water to customers. The writer has no quarrel with this classification if the canal systems simply furnish the means of transportation—i.e.—the canals themselves. However, by some anomalous reasoning it seems that the legislature has indulged in a fiction as regards an irrigation canal, engaged in the business of selling its own water. So far as we are concerned, such an irrigation canal system if classifiable at all as a utility should be grouped, at best, with utilities which are purely local in nature and falling within the second class defined by Bonbright, and thus distinguishable from the transportation type of utility which is measured by standards applicable to common carriers.

The only case in our jurisprudence touching upon Act 157 of 1914 and Act 268 of 1916 held that a domestic irrigation canal company was not a public utility since it did not seek any special privilege or "secondary franchise" under these statutes, but the court considered salient the fact that there was not sufficient evidence authorizing the conclusion that it operated as a public utility. It is, of course, impossible to hazard a guess as to what the decision might have been if the court had felt that this company actually operated as a public utility. What prominence might have been given Section 7 of the foregoing acts is not perceivable from the language of the decision.

By Act 43 of 1920 gravity irrigation canal corporations organized or to be organized under the laws of the state are "deemed public service corporations within the territory selected by them for the distribution of water and shall furnish water within the same." [Italics supplied.] This statute grants to such corporations rights of expropriation without requiring, as a condition precedent, a corporate resolution to the effect that the status of "common carrier" is sought. This, seemingly, is an exception to the rule applicable to other irrigation canal systems and this conclusion is further substantiated by the following language in Act 43 of 1920—"Provided that nothing herein contained shall be construed as conferring the right of expropriation upon existing canal systems or declaring existing canal systems to be public service corporations." This statute also comprehends

63. Supra note 13.
65. Supra note 58.
those corporations falling within the scope of Act 258 of 1918. It seems, then, that only these irrigation canal corporations, and those gravity irrigation canal systems comprehended by Act 43 of 1920, need not depend upon the absurd fiction of common carriage to be considered public service corporations. But, in order to define irrigation canal systems other than those specifically set out above, we are relegated to this fiction and until there is some classification or logical treatment of the problem, the resulting absurdities will remain.

Before the enactment of Act 161 of 1938, the principles elucidated above were inconsequential for purposes of a compilation of the law on the subject of the power of direct assessment by the Tax Commission or its predecessors. Because of that act, however, color is given to the foregoing discussion, since the assessment of all canals should not be within the jurisdiction of the local assessors. The Commission in its “Assessment Suggestions to Assessors and Police Juries” issued in February, 1942, directs the assessors to assess irrigation plants, which include as property water wells, pumps, power plants and canals, as improvements to the real estate upon which they are located. It has been held that a canal which is merely an improvement to the land, thus not a navigation or irrigation canal from which water is sold, would be assessed with the land and not separately; for the land and not the canal would be the principal thing. Conversely, it would seem that an irrigation canal engaged in the “business” of selling water would be the principal thing to consider, and the land would be incidental.

But the test for determining whether an irrigation canal is within the jurisdiction of the Louisiana Tax Commission to assess directly should comprehend more than an inquiry as to whether water is offered for sale; the canal system should be shown to possess the characteristics or attributes of a common carrier as set out by Act 268 of 1916, or on the basis of the State ex rel. Coco

67. The irrigation canal systems and corporate irrigation canal systems which, by statute, are deemed common carriers or public service corporations should be distinguished from ordinary canal systems which are not so definable.
68. Albert Hanson Lumber Co. v. Board of State Affairs, 154 La. 988, 98 So. 552 (1923). See language in Louisiana Tax Commission. Suggestions to The Assessors and Parish Boards of Equalization (1928) to the effect that “canals are subject to assessment. The ordinary drainage ditches, of course, are not included, as they are taken into consideration in the value of the land, but all timber canals, irrigation, towing [et cetera] canals are to be assessed.”
case, it should be shown to be engaged in business as a quasi public corporation. No test or rule need be set for gravity irrigation canal systems falling within the scope of Act 43 of 1920, for these are deemed to be public service corporations per se, so that there is no need to seek criteria for measuring them for the ultimate purpose of determining whether the Tax Commission has jurisdiction to initiate the assessments.

Despite the fact that gravity irrigation canal companies have been declared public service corporations, and other irrigation canals have been deemed common carriers, the Tax Commission has never assessed them directly. In reality, as the writer pointed out previously, the local assessors are authorized to assess irrigation canals as improvements to the land. We suggest that the Commission has more authority, in view of the verbiage of the direct assessment clause, to assess these irrigation canal systems than to initiate the assessment of the water producing plants.

Railway and Related Businesses

The Constitution declares all railroads to be public highways, and by statutory provision, foreign as well as domestic railroads are given rights of expropriation. But the broad language of the constitutional provision is open, necessarily, to interpretation, for as was pointed out previously, in defining the jurisdictional limitations of the power of direct assessment vested in the Tax Commission, the term railroad has been interpreted to mean a business which serves the public generally, or to put it precisely—each railroad or railway business must be a common carrier. Thus, logging railways, tram railways and tram road equipment, as for example, flat cars, obviously should be without the province of the Commission to assess directly. The rationalization justifying the court's refusal to grant permission to the State Railroad Commission to regulate a railroad built on the lands of adjoining plantations for the exclusive use and convenience of both is relevant here, for such a railroad is private, employed for private purposes and "It may have none of the benefits and advantages of a common carrier, as for instance, the right

69. Supra note 64.
71. La. Const. of 1921, Art. XIII, § 3.
73. See discussion supra pages 509 and 510.
74. Louisiana Tax Commission, Assessment Suggestions to Assessors and Police Juries (1942 and previous years).
of eminent domain, hence it carries with it none of the burdens and obligations of a common carrier as such. 775

This is the kind of reasoning which justifies local assessment or valuation of such railway property, and, as a matter of fact, the courts have carried over into some of the railway exemption cases this theory of use for private purposes, concluding that eligibility for tax exemption is dependent upon the offer of service to the public generally. 76 At the same time it has been held that exemption from taxation was meant to apply only to commercial railways, i.e., public service corporations in the service of the entire state, and not merely to a suburban or local railway, even though the latter be a common carrier. 77 This theory of tax exemption is, of course, predicated upon the idea of encouraging the development of commerce and industry in the state. At the same time it is interesting to note that insofar as tax exemption is concerned, a sharp line of distinction has been drawn between the common carrier railroads (other than the merely local ones) and those used for private purposes, just as the line has been drawn in determining the scope of power in matters of rate regulation, et cetera, by the Public Service Commission. In both of these instances, as well as in our instant problem of defining the jurisdictional aspect of the power of original assessment by the Tax Commission, it is incumbent, theoretically at least, upon the administrative officers to determine primarily whether the property is used for public or private purposes.

Our consideration of this category does not terminate with the simple, axiomatic statement that if a railway business is a common carrier, the Tax Commission has the power to assess originally that property used in the conduct of the business. It is not enough, in discussing this category merely to define "railway business" in terms of common carriers, and neglect to mention the fact that if a liberal or catholic interpretation is given the term "railway," any tank car company, for instance, would fall within the scope of the direct assessment clause. Yet, it is obvious that the interpretation given the word "railway" has been questioned, for in its "Suggestions to Assessors and Parish Boards of Equalization" for the year 1938, at page 34, the Louisiana Tax

Commission, though perhaps inadvertently, assumed the legislative prerogative by adding to Section 10, paragraph 2, of Act 140 of 1916, as amended in 1918, the italicized language in the following provisions: "the actual cash valuation and assessment of railway, telegraph, telephone, tank car, sleeping car and express business throughout the State of Louisiana is fixed and assessed directly by the Louisiana Tax Commission for all purposes."

But the poor draftsmanship of the "direct assessment clause" is particularly evident if one accepts the premise that the term "railway" comprehends private car lines, i.e., railway businesses carried on through the use of facilities (other than rolling stock) belonging to other railway businesses, as terminals, tracks, et cetera, and then discovers as a separate and distinct category—set out in the direct assessment clause—"sleeping car business." Whether this study be directed toward a consideration of a tank line company or a sleeping car company, the fact remains that they are both of the same class or type of business—private car lines. Thus the separate and distinct category—sleeping car business, is mere redundancy.

The writer is in doubt as to whether the law is settled on the point that the terminology "railway business" as used in the direct assessment clause comprehends both domestic and foreign car lines. But we admit that the method of assessing the rolling stock of both residents and non-residents, by the unit rule, is permissible; that "line" as used in Act 170 of 1898, Section 29 connotes "the route over which the railroad company carries on its business, whether on its own tracks or on tracks owned by another corporation." Actually, the latter part of Section 29 provides that rolling stock or movable property belonging to any interstate transportation company, whether it be a railway, bus, or trucking company, et cetera, is to be assessed by the unit rule method. This method, as a means of determining the "actual cash value" of property will be discussed in the latter part of this paper.

Aside from the fact that a private car line, domestic or foreign, might own property in the state other than rolling stock, which property is used in the conduct of its business, our chief concern is to attempt to set out the law and obviate what confusion there is regarding the authority of the Tax Commission to

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78. Director General of Rys. v. Hughes, Tax Collector, 157 La. 8, 101 So. 728 (1924).
assess directly the rolling stock belonging to the domestic car lines. Railway property, other than rolling stock, whether owned by a private car line company or which is simply a part of a railway system will be considered in a subsequent discussion involving Section 29 of Act 170 of 1898, as amended.79

Sections 6 of Act 122 of 190080 provides that the State Board of Appraisers may adopt rules and regulations in order to determine the valuation of railway property, as well as property belonging to other enumerated types of business. This provision was followed by a series of statutes concerned specifically with the problem of assessment and taxation of a particular kind of railway property, i.e., rolling stock, belonging to a particular class of owners, non-residents. The first of these statutes simply gave to the State Board of Appraisers the authority "to levy an assessment upon the value as may be fixed by them as fair and just upon the rolling stock of foreign corporations," and reiterated, in substance, that the unit rule method for determining valuation was to be employed. While the language quoted is cumbersome and prolix, it is sufficient, probably, to say that it is merely a restatement of the rule that such property is assessed or valued directly by a centralized board for purposes of taxation.

Section 4 of Act 9 of 1917, Extraordinary Session, is a decided improvement over the foregoing for it states that "the Board of State Affairs, as created by Act 140 of 1916, is hereby vested with the authority to determine actual cash value of and to assess all such rolling stock for all taxable purposes," referring, of course, to the rolling stock of non-residents. Section 12 limits the act to private car lines, that the provisions of the statute "shall not apply to the rolling stock of any regularly incorporated railway company, operating a railroad in the United States of America, the Dominion of Canada, or the Republic of Mexico."

Section 6 of Act 109 of 1921 reiterates the rule that the actual cash value of foreign rolling stock, belonging to persons, firms, et cetera, who are non-residents of the state and have no domicil in the state, is determined by the Louisiana Tax Commission. This act is predicated upon the constitutional provision that such rolling stock is taxed by the state for state purposes only.82

79. La. Acts 89 and 152 of 1932 amend Section 29 of Act 170 of 1898 [Dart's Stats. (1939) § 8370]. This section also provides for the unit rule method of valuing rolling stock.
80. This act supersedes Act 106 of 1898 [Dart's Stats. (1899) §§ 8325, 8326].
81. La. Act 281 of 1914, § 1, last paragraph. But this has been superseded. [Dart's Stats. (1939) § 8292n].
82. La. Const. of 1921, Art. X, § 16.
The law is well-settled that the Tax Commission has authority to value originally for purposes of taxation foreign rolling stock as well as rolling stock belonging to non-residents who have declared or been assigned domicils in the state. It would seem, then, that the Commission has the power to value originally rolling stock belonging to residents of the state, engaged in railway business as are non-residents. However, confusion and doubt arise when one considers statement 13 of the Agreed Statement of Facts in the case of Pennsylvania Tank Line Company v. Day, to the effect that "the State Board of Appraisers did not assess the property of Penick and Ford and the Louisiana Oil Company, domestic corporations operating tank cars in this said State, but that the cars of said companies were assessed at the domicils of these companies by parish assessors." (Italics supplied.) The import of this language is accentuated when we consider two opinions by the Attorney General which were concerned with determining whether the molasses tank line belonging to Penick and Ford was a railway business, "assessable by the Board of State Affairs only." It was the opinion of the Attorney General that Act 281 of 1914 did not repeal Section 1 of Act 122 of 1900, which authorizes the State Board of Appraisers to assess any kind of property in Louisiana which is used in the railway business; that if the property here is so used, a fortiori, the Board has the power to assess it. This opinion stated that litigation relating to the problem was pending at the time, but if any decisions were rendered on this particular issue, your writer has been unable to discover them.

If these tank cars were not common carriers, but used merely to facilitate another business, theoretically there is no problem, as we know. But if the crux of the matter be simply the fact that this property was owned by a resident, it would seem that in the light of statement 13 of the Agreed Statement of Facts in the Pennsylvania Tank Line case, cited above, there is authority for stating that domestic rolling stock is valued locally. One might interpose the argument that the word "assess" should be interpreted to mean that the local assessor merely lists the valuation on the assessment rolls on the basis of instructions disseminated

83. Supra note 82. La. Act 9 of 1917 (E.S.), § 4 [Dart's Stats. (1939) § 8304]. La. Act 109 of 1921 (E.S.), § 6 [Dart's Stats. (1939) § 8297].
84. See Louisiana Oil Refining Co. v. Louisiana Tax Commission, 167 La. 605, 120 So. 23 (1929). Here the Tax Commission apparently valued the rolling stock.
86. Opinions of the Attorney General (1916-1918) 311 and 313.
by the Tax Commission,87 for the term “assess” may be construed to mean merely setting a valuation and listing the property in the process of assessment for purposes of taxation, as well as the entire taxing process, including the application of the rate to the tax base and the determination of the amount of taxes due thereon.88

As we previously stated, this apparent distinction between foreign and domestic rolling stock for the purpose of setting up jurisdictional limitations in the power of direct assessment or valuation by the Louisiana Tax Commission has never been made an issue in any of the reported litigation. The court would consider, in all probability, that the efficacy of Section 6 of Act 122 of 1900 was not impaired by these subsequent statutes which are concerned with rolling stock of non-residents, leaving, then, to the Commission the power of original valuation of all common carrier rolling stock belonging to both foreign and domestic private car lines.89

As a practical matter the Louisiana Tax Commission requires each railroad doing business in the state to report the milage earned by all rolling stock using their routes. No distinction is made between the rolling stock used for purposes of common carriage and that which merely facilitates another business, as for instance the dairy business of the Cloverland Dairy of New Orleans. As the writer previously suggested it would seem that the Commission exceeds its authority in valuing originally this kind of property, notwithstanding the argument of expediency.

Another instance in which the Commission exceeds its jurisdictional authority lies in the fact that rolling stock earning less than 500 miles in the state during the year is not valued at all. Our Constitution states expressly which property is to be exempt from taxation.90 The immunity from taxation granted this personality by the Tax Commission raises a constitutional question, because such immunity is nothing more than a left-handed exemption. The argument was advanced to the effect that the line must be drawn at some point or it would be impossible to accomplish the task of evaluation. Too, it is true that very often the amount of revenue to be realized is so negligible that it is not worthwhile to tax this rolling stock. The writer admits the ad-

89. The writer wants to reiterate the fact that the Tax Commission assesses or values directly the domestic private car lines.
ministrative merits of the argument, but it is not within the province of any administrative body to decide which property should be exempt from taxation. In evaluation the granting of allowances for idle cars and special equipment where a certain daily mileage is not earned would seem to be an equitable way of tempering assessments.91

The category "railway business" has been construed by the Commission to comprehend local street railways. There is no denying the fact that such systems are common carriers. However, one Attorney General opinion declared that street railways were not assessable by the State Board of Appraisers but by the local assessors.92 This interpretation is incongruous with that of the Commission, and the rationalization of this opinion is probably the same accorded the constitutional provision exempting from taxation newly constructed railways for a definite period. It was held in the latter instance that such exemption was intended to apply to commercial railroads, that is, public service corporations serving the entire state; that a local street railway serves a particular locale, and though classifiable as a common carrier, was without the scope or purpose of the exemption provision.93 The reasoning is basically that the term "railway," when used by the legislators, refers to a public service corporation whose activities are not localized. Hence, when the Attorney General stated that the local assessors had authority to assess street railways, he was motivated, in all probability, by this notion of localization of activities. The language of the opinion was to the effect that had the legislators intended the State Board of Appraisers to exercise jurisdiction in assessing street railways, they would have employed the word "street" as a modification of "railways"; that Act 106 of 1898 uses only the term "railway," and this is to be interpreted as excluding the local street railways.94

Assuming that the Commission does have authority to value originally these local street railways, a nice question arises in view of the fact that municipal, interurban or suburban railways are being displaced continuously by bus systems. Needless to say this latter type of local transportation cannot be forced into the categorical "railway business." By constitutional exemption motor vehicles are exempt from state, parish and special taxes, but mu-

91. The Tax Commission does grant allowances in such instances effecting reductions in the assessments.
92. Opinions of Attorney General (1898-1900) 70.
93. Supra note 77.
94. Supra note 92.
municipalities and their political subdivisions may levy taxes. Under such a set-up the Commission seems to agree that the local assessor would have authority to value these vehicles for taxation purposes, even though there might be need for valuation by a centralized body, particularly where the bus systems are engaged in inter-parish transportation.

However, your writer suggests that the problem is not solved so easily when one considers, let us say, the automotive equipment belonging to an enterprise falling within the last category of the direct assessment clause, “express business.” Although these vehicles are exempt from state, parish and special taxes, municipalities may levy taxes. Do the municipal authorities or even the parish assessors have the power to value such property or is the absolute authority of evaluating vested in the Tax Commission? To our knowledge this question has never arisen, but it would seem that the latter alternative is the correct position.

It would be expedient, perhaps, to consider the efficacy of Section 29 of Act 170 of 1898 from a jurisdictional viewpoint. Again, we are not concerned at the moment with the last proviso of this section, which provides for the unit rule method of assessing rolling stock or movable property of transportation companies. Nor are the preceding provisions of material value in our initial problem of defining the jurisdictional limitations in the power of direct or original assessment. The verbiage of this section comprehends property belonging to transportation enterprises, both public utility and non-public utility, and the writer supposes its ultimate purpose is to designate which of the local governments have jurisdiction to levy taxes after the property described therein has been apportioned and this seems to be the interpretation or view of the authorities. The problem of apportioning or allocating the property to the local governments will be considered in the last part of this paper.

As we have said, all of the property listed in this section is either transportation property per se or property belonging or in some way related to a transportation business. But it would be fabrication to state that this section is concerned only with prop-

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95. La. Const. of 1921, Art. X, § 4, paragraph 8. La. Act 5 of 1934 (2 E.S.) [Dart's Stats. (1939) §§ 5736.1-5736.5]. This act provides for supervision of the assessments by the Tax Commission.
96. Supra note 79.
97. This statement is true if the interpretation of the words “assessed” and “taxed” as used in this section is not accepted. See infra p. 32.
98. See discussion infra page 55.
ery belonging to businesses classifiable as public utilities, or for that matter, to state that such property belongs to common carriers or is of itself common carrier property. This section provides that the property therein described shall be assessed and taxed in the various parishes or assessment districts, that is, locally. Here, of course, we are concerned primarily with the interpretation to be given the term "assessed" which is used conjunctively with the word "taxed." As we have said "assess" and "assessment" may have one or more meanings. The logical implication, however, is that where the word "assessed" is used with "taxed" with respect to ad valorem taxation the authorities should interpret it to comprehend the evaluation of property and perhaps the listing of such valuation on the assessment rolls, but nothing more, and the word "taxed" should comprehend the calculation and actual levy by the proper authorities.

The writer suggests that the foregoing interpretation, though resulting in a conflict with regard to determining the jurisdictional limitations of the power of direct assessment or valuation is as reasonable as that apparently assumed by the authorities, who refuse to consider this section more than an authority for apportioning property to the local units of government. We reiterate that this viewpoint avoids confusion, but our suggested interpretation is not without basis. Here, again, we see mirrored confusion which is the result of poor construction and usage of language, the usual thing in the property assessment and taxation statutes of the state.

**Telegraph, Telephone, Sleeping Car and Express Businesses**

The remaining categories of the direct assessment clause are "telegraph, telephone, sleeping car and express business." The former two might be classified, perhaps, as common carriers of intelligence, and the latter are undoubtedly measured in terms of common carriers. It is also possible to define any telephone business as a hybrid type of utility, a common carrier in the transmission of intelligence and at the same time, a system which maintains physical connections with the premises of its customers to facilitate the rendition of service. It is needless, perhaps, to

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99. Supra note 88.
100. States other than Louisiana have expressly declared telegraph and telephone companies to be common carriers. Gainesboro Telephone Co. v. Buckner, 169 S.W. 1000, 1002, 160 Ky. 604 (1914); Bailey v. Western Union Tel. Co., 171 S.W. 839, 842 (Tex. 1914).
101. The transportation utilities are measurable in terms of common carriers. See discussion supra page 13.
reiterate such propositions as, for instance, that private telephones and telephone cooperatives are without the scope of the direct assessment clause. As to the category “express business,” the writer was informed that there is only one express company in Louisiana assessed originally by the Tax Commission. Its personality as, for instance, scales used for weighing freight, are valued in the same manner as is other property falling within the jurisdiction of the Commission.

In conclusion it might be said that despite the assumption of power in some instances by the Commission, because of the practical aspects in the problem of evaluation, the concept “business” has been interpreted to comprehend only that kind of property which has the attributes essential for classification as public utility property. But, the fact remains that there has been no elaboration in the reported litigation on the problem of ascertaining the jurisdictional limitations in the power of original assessment regarding property falling within the scope of any of these remaining categories. So it seems to the writer that it is only necessary with regard to these remaining categories to utilize the applicable criteria previously set out and it is equally unnecessary to restate them at this time.

THE DETERMINATION OF VALUE OF UTILITY PROPERTY

Having attempted to define the jurisdictional limitations of direct or original assessments by the Louisiana Tax Commission, we are concerned next with determining the methods by which the property of the so-called utilities is valued, and finally, with the apportionment and certification of these assessments to the assessors in order that the tax rolls may be completed for purposes of the state and local levies.

The valuation of all property in the state for purposes of assessment cannot exceed its “actual cash value.” A priori, the property belonging to the so-called public utilities should be assessed by the Commission not in excess of its actual cash value. Specifically, the pertinent part of Section 10, paragraph 2, of Act 140 of 1916, provides that “the actual cash valuation and assessment ... shall be fixed and assessed by the Board [Louisiana Tax Commission] for all purposes.”

102. Supra note 35.
103. This is the Railway Express Company.
105. Note in the amending statutes, La. Act 161 of 1938 and La. Act 236 of 1940 (Dart's Stats. (1939) § 8321) the reference to the Board of State Af-
Formerly, the ultimate test for measuring the "actual cash value" of a given piece of property was to determine the price for which the property "would sell for, for cash in the ordinary course of business, free of all incumbrances otherwise than by forced sale."\(^{106}\) In 1934, however, the legislature, in re-defining this phrase, rendered nugatory, impliedly, at least, a host of decisions predicated upon this principle.\(^{107}\) To date there are no reported decisions raising issues which involve a consideration of the new definition, which reads as follows:

"The words 'actual cash value' or 'actual cash valuation,' shall mean the valuation at which any real or personal property is assessed for the purpose of taxation, after the assessing authorities have considered every element of value in arriving at such valuation. And the price at which any piece of real estate or personal or movable property shall have been sold for cash in the ordinary course of business, free of all encumbrances, otherwise than at forced sale, shall be evidentiary only, and to be considered with other factors in determining the actual cash value for assessment purposes."

In this latest definition, then, the former ultimate test is, at most, just another element to be considered in the determination of "actual cash value."

With the possible exception of the rolling stock cases we are confronted with the fact that there is almost a dearth of reported litigation in the state on issues involving the determination of the "actual cash value" of public utility property. There is perhaps a logical reason for this, to be found in the statutes setting

\(^{106}\) La. Act 170 of 1898, § 91 (6), as amended and re-enacted in La. Act 130 of 1902, § 5 (6) [Dart's Stats. (1939) § 8200].

\(^{107}\) La. Act 126 of 1934 amended and re-enacted the statutes cited supra note 3. [Dart's Stats. (1939) § 8200]. Mackay Telegraph Co. v. Board of State Affairs, 149 La. 397, 89 So. 249 (1921). This case deals specifically with the valuation of utility property, namely, property belonging to a telegraph company. But see the following with regard to the valuation of property belonging to lumber companies: Lyon Lumber Co. v. Louisiana Tax Commission, 158 La. 990, 105 So. 39 (1925); Feavy-Wilson Lumber Co. v. Jackson, 161 La. 669, 109 So. 351 (1926).

The constitutionality of this statute may be questioned in view of the implication that the "actual cash value" of property is no longer absolutely determinable in terms of present day market value. The writer suggests the purport of the constitutional phrase "actual cash value" is market value, statutory language to the contrary notwithstanding. In criticising this act, we admit that it was essentially a depression measure, enacted to enable the levying units of government to maintain a sufficient flow of public revenues despite the breakdown of the market.
up the authority of the Louisiana Tax Commission or its prede-
cessors to assess directly the property belonging to the so-called
utilities. Act 106 of 1898, Section 6, as amended and re-enacted by
Act 122 of 1900, Section 6, provides that the State Board of Ap-
praisers "shall have the right to adopt such rules and regulations
it may deem necessary" for making "a true and correct assess-
ment and valuation of all property belonging to corporations, as-
sociations or individuals employed in railway, telegraph, tele-
phone, sleeping car and express business." The broad and unre-
strictive language of this section, in addition to the fact that there
has been little or no litigation on the subject, justifies the conclu-
sion that, generally, there are no absolute standards by which the
Commission is bound in its valuation of utility property. True,
this premise admits of exceptions, for instance, as regards rolling
stock, which is assessed by means of a unique yardstick, the unit
rule,108 and which merits special consideration at a later point. It
was held, however, that had there been no statutory provision for
the unit rule method of assessment, still under Section 6 of Act
122 of 1900 "It is quite likely that this 'right to adopt such rules
and regulations,' as the board may deem necessary for the pur-
pose of making a true and correct assessment and valuation of all
property employed in the railway business, would be construed to
include the authority to adopt and apply the so-called unit rule,
for the assessment of the rolling stock of an interstate railroad."109

The oft-repeated language of New Orleans Cotton Exchange
v. Board of Assessors110 is especially true with respect to the pres-
ent discussion, for,

"There exists, in fact, no rigid rules for the valuation of
property, which is affected by a multitude of circumstances
which no rule could foresee or provide for.

"The assessors must consider all these circumstances and
elements of value, and must exercise a prudent discretion in
reaching conclusions."

How then does the Commission determine generally the "actual
cash value" of property—"the constitutional basis of its taxa-
tion?" 111 Insofar as so-called public utility property is concerned,

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108. Supra note 79.
109. Director General of Railroads v. Hughes, Tax Collector, 157 La. 8,
101 So. 728 (1924).
So. 59 (1887).
it seems to the writer that this question may be answered by simply saying that because of the broad language in which the pertinent statutes are couched, the only restraint is that the Commission not abuse its power by adopting patently unconstitutional and discriminatory methods.

In order to aid the Commission in its duty of initiating the specific assessments, Section 10, paragraph 14, of Act 140 of 1916, as amended and re-enacted, in part provides that it is required of “individuals, partners, companies, associations and corporations engaged in railway, telegraph, telephone, sleeping car and express business, or in any transportation business to furnish information concerning their capital, funded on other debt, current assets and liabilities, value of property, earnings, operating and other expenses, taxes and other facts which may be needful to enable the board to ascertain the value and the relative burdens borne by all kinds of property in the state according to such forms as shall be prescribed by the board, and at such time as it may fix.” The latter part of this section provides that individuals, companies, partnerships and corporations must make further reports to the Board (now the Louisiana Tax Commission) which shall be confidential and used only for the purpose of securing correct assessments. This latter provision is not limited to railways, et cetera, or any transportation business; all individuals, companies, et cetera, must make these reports, and one decision has stated that “such reports are not intended as the basis of individual assessment, but for comparison, in order to arrive at an average fair value of the plants and products of such corporations.” In other words, by this decision, at least, this part of paragraph 14, Section 10, of Act 140 of 1916 seems to be, in effect, somewhat of an elaboration upon the power of equalization vested in the Louisiana Tax Commission, despite the language which provides that the reports are to be used only to secure correct assessments.

The first part of paragraph 14, quoted above, apparently serves a dual purpose, enabling the Commission to utilize the reports for valuation and equalization purposes. Then, too, by Section 4 of Act 9 of the Extraordinary Session of 1917 all non-residents operating rolling stock over any railway in the state must furnish “such reports of their operations as the said Board may require, in order to enable the said Board to determine actual

112. La. Act 211 of 1918, La. Act 236 of 1940 [Dart’s Stats. (1939) § 8321].
cash value and to assess said rolling stock.” Both of these statutory provisions authorize the Board (the Commission) to demand whatever information necessary to the exercise of its powers and duties in the field of assessment. These provisions, as well as Section 6 of Act 122 of 1900, quoted above, are concerned specifically with the carrier type of utility business. Pretermitting the fact that the authority to assess directly certain utilities falling within the second class as defined by Bonbright\textsuperscript{114} necessarily includes the power to adopt procedures and methods incident to the exercise of such right, the fact remains that there is no express reference to this kind of utility in the broad language of Section 6 nor in the other two sections cited above. Here, again, we see inadequacy in the statutes, reflecting upon the legislature for failing to bring these statutory provisions to date.

Nevertheless, from an administrative point of view we may state that various businesses, classified by the Tax Commission as public utilities or public service corporations, whether engaged in business as carriers or otherwise, are required to make reports as specified. In addition to these reports, it seems that the various utilities must furnish the Commission a sworn, formalized statement listing therein all properties. If such lists are not furnished as required by law before April 1 of the current year, the Parish of Orleans excepted, the taxpayer is said to have lost his right to contest the correctness of the assessment,\textsuperscript{115} which is then made without the use of tax lists. So it was held under Section 14 of Act 170 of 1898 that a railway company was not estopped from contesting the correctness of its assessment since it furnished its “assessors” with a tax list, and “assessor” in this section means, evidently, “the assessor by whom the assessment is to be made. This assessor in the case of railway property is the state board of appraisers; and the plaintiff company furnished to said board the list thus required.”\textsuperscript{116} Section 14 of Act 170 of 1898 was amended and re-enacted by Section 3 of Act 182 of 1906, which also excepted the Parish of Orleans from the force of its provisions. As the writer understands it, April 15 or thereabouts\textsuperscript{117} is the delinquency date for the return of tax lists in Orleans Parish. How-

\textsuperscript{114} Supra note 13.
\textsuperscript{116} Morgan's Louisiana & T.R. & S.S. Co. v. Aucoin, 140 La. 768, 772, 73 So. 859, 860 (1917).
\textsuperscript{117} La. Act 170 of 1898, § 25 [Dart's Stats. (1939) § 8344].
ever, the Commission has made April 1 delinquency date for the return of tax lists by all utilities in the state. There is statutory authority under Section 6 of Act 122 of 1900 for setting the same time for the return of tax lists by the enumerated so-called public service businesses both in and out of Orleans Parish. But this statute was drawn only with reference to the five categories—"railways, telephone, telegraph, sleeping car and express business," so that the same authority is inapplicable to the three categories added in Act 161 of 1938—"gas and oil pipe lines, electrical transmission lines, (and) water and gas distribution systems." 

(Parenthesis supplied.)

We must not confuse the date upon which tax lists are made returnable to the assessors with what the authorities call "tax date." The former's importance is procedural, for purposes of determining rules of administration, but the latter relates to the substantive phase of the law. So the courts have held time and again that assessments for the current year are made on the basis of the condition of things as they exist on January 1 of each calendar year. There are exceptions to this general rule, as for instance August 1 is tax date for Orleans Parish, but the Louisiana Tax Commission has used January 1 as tax date for utilities in Orleans and, in valuing railway property at least, has stated that it must adhere to and apply this principle to the letter.

In an opinion which was really rendered by the Department of Revenue, the purported successor to the Louisiana Tax Commission, we find the following language:

"Conditions existing on January 1st of each year is the


119. La. Act 227 of 1936, § 1 [Dart's Stats. (1939) § 8345].

120. See discussion infra p. 538.

yardstick to be applied in assessing all property in Louisiana, irrespective of its character, classification or use.”

Further,

“The existing status on a fixed date is the law that governs and no administrative formula can change it. All renditions are submitted on this basis and the jurat of each supports the data supplied as of the date listed. . . .”

Despite this definitive language the opinion states further that the Department was bound to follow the standard set by the Louisiana Tax Commission in valuing railroads, which is “based on the reproduction cost of such railroads, as reported by the Interstate Commerce Commission, less depreciation, and plus additions and betterments made since the date of the Interstate Commerce Commission valuation.” We find more elucidative language to the effect that “the ‘actual cash value’ of railroad property, for purposes of taxation, has been determined by the taxing authorities of Louisiana by the reproduction cost less depreciation, as reported by the Interstate Commerce Commission, with consideration given such factors or elements, as net earnings, competition [et cetera].”\textsuperscript{1}\textsuperscript{2} Inconsistency in reasoning and patent conflict are at once apparent when one considers the foregoing statements with the following: “it is established jurisprudence that property must be assessed on the calendar year basis and must be valued as of January 1, of each and every year.” This criterion in itself necessarily forbids and prohibits the Louisiana Tax Commission, now Department of Revenue, from considering bond values and earnings of past years in determining an assessment for the current calendar year, or for any other year as long as the present law remains unchanged.” What are the “net earnings” referred to in the former quotation and why are valuations set by the Interstate Commerce Commission for previous years considered in the determination of the “actual cash value” of railway property, and bond values and earnings of past years rejected? It is obvious that “net earnings” as previously used are not determinable

\textsuperscript{12} See Crowell & Spencer Lumber Co. v. LaFleur, 137 La. 772, 776, 69 So. 170, 171 (1915) wherein it was stated that “Where a discretion is confided to an officer [the assessor], it must be exercised by himself, and cannot be exercised by some one else for him.” The writer suggests that the employment of the replacement cost figures reported by the Interstate Commerce Commission might amount to an improper delegation of the power to assess which is vested in the Tax Commission. We were informed that the Interstate Commerce Commission’s valuations were used to determine only the value of the trackage but this would not change the possibility of improper delegability of the power to assess.
only as of January 1 of the current year. If the Interstate Commerce Commission valuations are used as elements or bases in determining “actual cash value,” the argument is puerile which is advanced against a consideration of the capitalization of net operating income and the value of stocks and bonds on the hypothesis that conditions as of January 1 of the current year control. No one will deny the fact that the Interstate Commerce Commission’s valuations are not as of January 1 of the current year; then the discrimination is unwarranted which provides against employing as elements, at least, the value of stocks and bonds in past years and a capitalization of net operating income.

By refusing to consider past and future earnings, authorities reject valuable data pertinent to the determination of the present value of property. In permitting the use of such information to determine “actual cash value” we are not acting contrary to the mandate of the courts, which state that the condition of things as of tax date, or January 1, govern in the assessment of property. A prospective vendee investing his money would consider the past and prospective earnings along with the stock and bond values of a going concern because he would be interested in all relevant information pertaining to the actual value of the business.

There is an argument to be advanced against the employment of the capitalization of net operating income as either a method or an element in the determination of “actual cash value,” which, however, was not advanced in this opinion possibly for the reason of its inapplicability with regard to railway property. The basis of such an argument may be found in paragraph 14 of Section 10 of Act 140 of 1916, as amended and re-enacted, in the clause which reads as follows: “except that no individual, corporation or partnership shall be required to give his gross or net earnings, the amount of expenses incurred or any salaries paid.” This provision would seem to refer generally to all businesses of a public service nature or otherwise. However, this general language must be limited to businesses other than those enumerated in the first part of paragraph 14 of the same section, for therein the Commission is vested with authority to demand reports from the specifically enumerated businesses “concerning their... earnings, operating and other expenses.” Thus, the “actual cash value”

123. Supra note 112. The writer understands that the present legislature has just passed House Bill 525 which deletes the clause considered in the text. The bill awaits the Governor’s signature at this writing.
of property belonging to utilities, other than those comprehended by the first part of paragraph 14, is not determinable by employing as a method or element in the method, the capitalization of net operating income.

But the argument advanced here against considering net operating income in the determination of "actual cash value" is ineffectual as regards railroad property, since information regarding "earnings, operating and other expenses" must be furnished by the railroads. As a matter of fact, the only decision on the books which treats of issues arising from the valuation of property belonging to a railroad reversed the lower court for "giving no material weight, or consideration to the evidence adduced in regard to the net revenues and earnings of the road." This case is cited in the opinion as authority for a refusal to employ the value of stocks and bonds in determining the value of railway property, but is disregarded in the subsequent discussion of "net earnings and revenues" of the railroad as an element or factor in the evaluation process.

So far as railroad property is concerned this opinion states dogmatically that value is determined on the basis of reproduction cost less depreciation, and that this has been the scheme for a period of over thirty years. The "Minutes and Rulings of the Louisiana Tax Commission" of August 20, 1926, September 21, 1932, and May 17, 1933, are cited as authority. The writer had access to both latter rulings, and nowhere is replacement cost less depreciation established as an absolute criterion for determining the value of railroad property. The fact is, in the 1932 ruling the Commission states frankly that "The main guide afforded the Commission in the fixing of real estate and like values is absent when we seek an intelligent solution of railroad values, namely, "selling values." Further, "Railroads are not bought and sold like lands and commodities."

We suggest that in order to determine reproduction cost, one must accept market values and the latter are synonymous with "selling values." It is obvious that the Commission was compelled to reduce assessments at this time because of the havoc wrought

125. Supra note 121.
by the depression, but if replacement cost less depreciation had
been considered the ultimate criterion, decreases in assessments
would have resulted, in all probability, in somewhat of a left-
handed exemption. The Commission stated that it took “cogni-
"tance of the basis upon which the roads seek revaluation, namely,
the stock and bond method, and the method of capitalization of
net income” agreeing “with the courts that both methods are
most persuasive in arriving at true values for assessment pur-
oses, and the Commission in making its decision has studied the
effect produced by using such methods.” It is impossible to dis-
cern which method or combination of methods were used by the
Commission in re-valuing the property to allow reductions in
assessments. From the language quoted, however, it is rather
evident that replacement or reproduction cost less depreciation
was not employed even as the determining factor much less as the
scheme or method for valuing the property of the railroads.

The phrase “actual cash value,” the constitutional basis for
assessing property in the state, defies definition by any “rule of
thumb.” Like “true and correct value” and similar expressions,127
the very fictitiousness of the language would condone an inter-
presentation which might preclude, at the outset, any clear and intelligi-
ble method proposed for valuing property. So far as the writer is
able to judge the “actual cash value” of utility property is what
the authorities make it, relying for the most part, upon their own
judgment. But the element of compromise or negotiation for
modification of assessment with the taxpayer is of basic impor-
tance. In the final analysis, however, if the assessed value of the
property is not obviously excessive in the opinion of the adminis-
trative authorities, no decrease will be allowed. There is no doubt
that complete and scientific accuracy in valuation is humanly im-
possible.128 Too, we must not forget a cardinal principle in the
field of taxation to the effect that “officers, charged with the func-
tion of assessing property for the purpose of taxation, are pre-
sumed to have pursued the proper method of ascertaining its
value and to have properly performed that duty.” The taxpayer

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126. “Minutes and Rulings of the Louisiana Tax Commission” of Septem-
ber 21, 1932.
127. “True and just value” and “actual value” are other common expres-
sions used as frequently as “actual cash value” in statutes and by the courts.
For a discussion of the former see Industrial Lumber Co. v. Oden, 147 La.
751, 85 So. 901 (1920).
128. See Soniat v. Board of State Affairs, 146 La. 450, 83 So. 760 (1920)
wherein the court said that there may be and are as many valuations as there
are individuals called upon to express opinions on the matter.
then has the burden of disproving or overcoming this presumption, which is, of course, rebuttable. But, as a matter of fact, the preponderance of evidence rule for overcoming presumptions, in most instances, would render ineffectual at the outset, an attempt to secure a reduction in assessment.

Practically speaking, the writer was told that most valuations of utility property, including railroad property, are predicated on "book value," but when this seems to be out of line for one reason or another, an investigation of a more or less cursory nature is made, and the valuation is reduced or increased accordingly.\textsuperscript{180} One can be sure that the employment of the phrase "actual cash value" as the standard or basis for assessing property has produced untold confusion, particularly with regard to so-called utility property. No one will deny that perspicuity is lacking in the authorities, but they are in accord that the problem is not so acute with regard to the valuation of a piece of land as it is when one attempts to set the "actual cash value" of property belonging to an interstate railway system. Insofar as concerns the former, evidence of prices for which similar properties have been or are being sold is easily obtainable;\textsuperscript{131} but utility property is not traded upon as is an ordinary piece of land. The artificiality of the false doctrinal premise—"actual cash value"—is evident particularly when one attempts to rationalize the criteria by which the "actual cash value" of so-called utility property is set.

As Bonbright so aptly puts it "As long, however, as the legislatures persist in their use of ad valorem taxes, the problem of finding the least objectionable method of valuing a business enterprise for tax purposes will also persist," that "this choice must lie with one of three methods or else with some standardized composite: (a) the stock-and-bond method, (b) the capitalized-realized-earnings method, and (c) the depreciated-replacement-cost or asset-value method."\textsuperscript{132}

In the preceding discussion the writer attempted to show the confusion attendant upon the valuation of one kind of utility

\textsuperscript{180} Usually a trip is made to the situs of the property and an investigation is conducted there to determine the value of such property.
\textsuperscript{131} See discussion supra p. 632 involving the new definition of "actual cash value." But see 1 Bonbright, Valuation of Property (1937) 511-632.
\textsuperscript{132} Bonbright, op. cit. supra note 131, at 630, 631.
property, namely, railway property. In the authority cited it was stated expressly that the ultimate criterion for determining actual cash value of railway property is the replacement cost less depreciation method. But the annual reports filed by the railroads with the Commission are inapposite to this premise, for “original cost value” is the cardinal factor in each schedule concerned with the return of physical properties. The same is true with regard to the property belonging to car lending, stock car, refrigerator, sleeping car and other private car line companies. But the reports of the oil and gas pipe lines and the localized utilities, other than telephone and telegraph companies require that the property be listed at “cost.” The writer is not sure whether this term is the same as “original cost” or is synonymous with “replacement (reproduction) cost.” So far as the localized utilities are concerned, there is the presumption that “original cost” is meant. Too, the valuation of oil and gas pipe lines is determined, admittedly, in accordance with a minimum values schedule, which may be higher than the reproduction values of the current year. So the presumption would be here again that “cost” of property as listed in the reports means “original cost.”

One of the major obstacles to overcome, as we see it, is with regard to the depreciation to be allowed on the property, whether “reproduction cost” or “original cost” be the mode employed in the evaluation. The administrative authorities are wont to use fixed depreciations, but in at least one instance, wherein the valuation of an oil pipe line was questioned, the Second Circuit Court of Appeals (Second Division) of Louisiana has said “while a fixed depreciation test tends to uniformity in establishing values, it must yield to evidence of actual depreciation of a specific object the value of which is in dispute in a suit to correct an assessment. Deterioration is not uniform or constant in objects of the same kind and character. The life of a pipe line varies in proportion to the amount of destructive chemicals in the earth through which it passes.” The taxpayer was allowed a decrease in assessment of the pipe line since it was able to show definitively more depreciation than credited by the authorities. The same reasoning was adduced by the Supreme Court of Louisiana in the case of Peavy-Wilson Lumber Company v. Jackson, wherein the assessment of

machinery, houses of mill hands, the plant, et cetera, was contested. It would seem, then, that until the fixed or arbitrary depreciations are questioned, the fact that uniformity in values is established justifies the employment of fixed depreciations, subject to the right of the taxpayer to rebut the so-called “actual cash value” so fixed by producing evidence to the contrary.

Without attempting to set forth the economists’ nice distinction between “book value” of property and “original cost plus additions and betterments,” if any there be, so far as we are able to discern, the terms usually are used interchangeably by the administrative authorities in the determination of “actual cash value” of utility property. Thus, while telephone companies are not required by the reports to give information concerning the original cost of property, still they are assessed on the basis of the “book value” of such property. However, the writer was told that the property belonging to the Southern Bell Telephone & Telegraph Company is valued by a scheme compounded by the company, which is accepted in toto by the Commission. This scheme or method is predicated upon three factors, as we take it, namely, (1) a capitalization of Louisiana net income, (2) the book value of the property and (3) a capitalization of net income throughout the United States. “Book value” in this instance would seem to be the value attributed the property by the officers of the company and nothing more. So in this particular case, “book value” and “original cost” are not the same.

As we mentioned previously, the reports in which property is returned to the Commission for purposes of assessment require “original cost” or the equivalent except in the reports of telephone and telegraph property. Although the administrative authorities tend to employ the terminology “original cost” or its equivalent synonymously with “book value,” there can be no quarrel so long as there is a sufficient degree of clarity in the purport of the language. But we do question the legality of any method employed for the determination of the “actual cash value” of property, which is predicated upon either “book value” or “original cost.” As to the latter, the previously cited decision of

136. 161 La. 669, 101 So. 351 (1926).
137. Supra note 129.
138. “Book value” means in this instance the value of the property the telephone companies carry on their books.
139. An average is taken of the three factors of this method, which is drawn exclusive of Orleans Parish.
140. Cf. infra note 158.
141. Bonbright, op. cit. supra note 131, at 140-149.
Morgan's L. & T. R. & S. S. Co. v. Board of Reviewers, Parish of Iberia,\textsuperscript{142} and a decision in 1921—Mackay Telegraph Co. v. Board of State Affairs,\textsuperscript{143} refuse to countenance the argument advanced by the taxpayer to the effect that the valuation of such property for ad valorem tax purposes should be grounded upon "original cost less depreciation." The court in the latter decision held that despite the fact that "the prices of labor and materials in the year 1917 [overassessment being claimed for that year] were very much higher than those at the time the lines were constructed, and that the basis of valuation should not be these inflated prices, but those prevailing at the time of construction . . ." still "the value of the property is to be determined as of the year of assessment, and not of some year in the past."\textsuperscript{144}

There are decisions on the books appertaining to the valuation of property other than utility property, which expressly refuse to consider "book value" as the basis in the fixing of assessments.\textsuperscript{145} Then, jurisprudentially, it would seem that the administrative authorities transgress their authority in utilizing either standard or criterion as the initial step in the assessment process. The writer admits an incongruity in the face of Section 6 of Act 122 of 1900, which grants to the centralized body unlimited powers for adopting rules and regulations in the exercise of its authority to initiate the specific assessments listed therein, and a suggestion that the statutory law should govern is well taken.\textsuperscript{146}

In a rather circuitous manner, the Mackay Telegraph case, cited above, could be interpreted to substantiate the position that all so-called utility property should be valued by employing the third method listed by Bonbright, i.e., replacement cost less depreciation.\textsuperscript{147} However, the writer has attempted to show that, practically, the "actual cash value" of utility property is not determined through the utilization of this formula. Reiterating a former conclusion, the valuation of the so-called utility property is, in the main, dependent upon the judgment of the assessing authority, the Louisiana Tax Commission. To elaborate upon this conclusion, it might be said that the Commission has seen fit to direct its authority for the most part toward, and at the same time

\textsuperscript{142} 41 La. Ann. 1156, 3 So. 507 (1887).
\textsuperscript{143} 149 La. 397, 89 So. 249 (1921).
\textsuperscript{144} See supra note 118.
\textsuperscript{145} Peavy-Wilson Lumber Co. v. Jackson, 161 La. 669, 109 So. 351 (1926). See also Industrial Lumber Co. v. Oden, 147 La. 751, 85 So. 901 (1920).
\textsuperscript{146} But note that this section does not extend to the first three categories of the direct assessment clause.
\textsuperscript{147} Supra note 132.
(predicate its power of initiating these assessments upon, the "original cost less depreciation" method, decisions to the contrary notwithstanding.

This method is not one of the "least objectionable" set out by Bonbright,148 and much can be said against employing it in the valuation process. This paper, however, does not purport to be a thorough critique on the subject, nor does it venture to propose a "cure-all" for the obvious confusion in the field of "public-utility" property valuation. However, it is the opinion of the writer that the objections to the employment of "original cost less depreciation," with due consideration accorded improvements, are so patent that there is justification in criticism even though such criticism is not constructive.149 Assuming for the moment that "original cost" of utility property is not available to the administrative authorities, what method or even basic criterion is utilized? So far as the writer is able to discover, an appraised valuation, which is usually the "book value" assigned the property by the taxpayer, is then appropriated as the initial, as well as the final, step in the assessing process. The evolvement of the valuation process is rather complicated as one can see from the reports which the so-called utilities file annually with the Commission, although a definite attempt has been made to simplify an obviously complicated procedure by asking for specific and detailed information, regarding, for instance, the obsolescence of the property, the year in which it was purchased, et cetera. From this information the authorities derive monetary figures which represent the worth of the property. An outsider, as your writer, is unable to state what weight is attributed each factor, nor offer a compilation of the formulae employed in valuing the so-called utility property.

A separate and distinct system has evolved in the valuation of rolling stock. This has been called the Unit Rule Method and has been given the approval of both the State Supreme Court and the Supreme Court of the United States.150 This method of assess-

148. Supra note 132.
149. Some of the objections may be listed as follows: (1) the records revealing the "original cost" of property may be unobtainable; (2) there is a subjective element to be accounted for especially in depreciating property; (3) it is a difficult task to measure improvements and betterments, especially in instances where property was cheaply constructed.
150. Director General of Railroads v. Hughes, 157 La. 8, 101 So. 728 (1924). American Refrigerator Transit Company v. Hall, 174 U. S. 70, 19 S. Ct. 599, 43 L.Ed. 899 (1899). The unit rule has been employed in the determination of the taxable proportion of capital stock belonging to an interstate company
ing rolling stock and movable property on the basis of a mileage ratio was sanctioned before the passage of Act 170 of 1898. The latest statute, Act 152 of 1932 reiterates the rule, which reads as follows:

"... but the rolling stock or movable property of any railroad company, telegraph company, canal company or other transportation company, whose line lies partly within this State and partly within another State, or States, or whose sleeping cars run over any line lying partly within this State or partly within another State or States, shall be assessed in this State in the ratio which the number of miles of the line within the state has to the total number of miles of the entire lines."

Although the unit rule, as a mode of evaluation, applies to interstate bus systems and the like, we must remember that kind of movable property is subject only to municipal taxes, under the constitutional exemption of motor vehicles and boats using gasoline as fuel. The writer does not know whether the municipalities, which exercise this right of taxation, employ the unit rule measure for assessment purposes. If another mode is used, its legality certainly may be questioned in view of the definitive language quoted above.

As we previously pointed out, the Commission has assumed jurisdiction for valuing all rolling stock using the regular railroad routes in the state and, in at least one instance, has gone beyond this by valuing the rolling stock belonging to a dairy business simply for purposes of expediency. Since the jurisdictional problems have been discussed in the earlier part of the paper, our concern here is to define the actual workings of the unit rule.

Procedurally the mode of securing information regarding mileage earned by rolling stock in the state is simple. The railroads report the mileage incurred by all of their rolling stock as well as that earned by the rolling stock belonging to others. Copies are sent to the owners, who have ten days to check and make corrections when necessary; too, protest must be filed within this period. These reports are in addition to those filed an-

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151. See La. Act 106 of 1890, § 27. This act, of course, has been superseded.
153. This information is included in special forms in the annual reports filed by all railroads with the Louisiana Tax Commission under Section 14 of Act 140 of 1916, as amended [Dart's Stats. (1939) § 8321].
154. The ten-day period is in the nature of an administrative measure,
ually by special car lines, engaged in the railroad business.\textsuperscript{155} As in the case of other property, where there is refusal or neglect to report or certify the forms to the Commission, an arbitrary assessment is made.

However, when the number and value per car of the rolling stock of a given company operating in Louisiana has been set by way of these reports, the assessment is then determined mathematically by dividing the Louisiana mileage by the total mileage made all over the United States and multiplying the result by the value of the total number of cars operated.\textsuperscript{156} Idle car allowance is granted upon request and each car is depreciated arbitrarily.\textsuperscript{157}

Here again we find the value of each car or locomotive, et cetera, determined on the basis of original cost instead of replacement cost. But the authorities draw a distinction between “book value” and “original cost” in valuing rolling stock, by fixing minimum values, declaring that the value of the property cannot be less than certain amounts listed irrespective of the book value reported.\textsuperscript{158}

\textbf{Local Apportionment in Assessments of Utility Property}

A very troublesome problem is the apportionment of these assessments among the proper local units of government. By Section 29 of Act 170 of 1898, as amended in 1932,\textsuperscript{159} we find a provision to the effect that certain property which would include rolling stock “shall be assessed and taxed at the domicile or principal office,” which is to be determined by Article XIII, Section 4, of the Constitution of 1921. In the case of rolling stock belonging to domestic railroads, the domiciliary parish and municipality have rights to the revenues derived from the taxation of such property. But domestic railroads, as such, are decidedly in the minority; more of the railroads doing business in the state, whether they

\textsuperscript{155} The special car lines file their own annual reports under Section 14 of Act 140 of 1916, as amended [Dart’s Stats. (1939) § 8321].

\textsuperscript{156} See Gulf Refining Co. v. Tillinghast, 152 La. 847, 94 So. 418 (1922).

\textsuperscript{157} With regard to the rolling stock of the special car lines idle car allowance is granted to the extent of twenty per cent. of the total units operated when tank cars fail to earn as much as one hundred miles per car per day and when refrigerator cars do not earn as much as one hundred fifty miles per car per day. As to other specially made equipment allowance is granted on the merits of each case. See discussion supra p. 543 with regard to arbitrary depreciation.

\textsuperscript{158} Cf. supra note 140. This statement was issued by the Louisiana Tax Commission especially with regard to the rolling stock of the special car lines operating in Louisiana.

\textsuperscript{159} See supra note 79.
be railroads in the generic sense or the tank car line companies engaged in the business of carriage, have been chartered by other states.

Under the verbiage of this section the state and federal courts have not seen eye to eye in the interpretation to be given the "domicile or principal office" of such a foreign railroad business. The Supreme Court of Louisiana has apparently taken it for granted that the appointment of an agent for service of process is tantamount to a declaration of domicile in the state, and hence the rolling stock may be assessed and taxed at the domicile.\textsuperscript{160} A federal district court decision stated that it was bound by this holding, but was reversed by the circuit court on the theory that the appointment of a local agent for the purpose of receiving service, as required by law,\textsuperscript{161} is not an establishment of domicile to authorize the assessment and taxation of its rolling stock by the parish and municipal authorities; but that such rolling stock is assessable and taxable only by the Tax Commission for state purposes under Article X, Section 16 of the Constitution of 1921.\textsuperscript{162} This latter decision attempted to distinguish those state decisions, which in effect were contra to its ruling. Subsequent federal decisions involving Act 109 of 1921 (Extraordinary Session) which is predicated upon Article X, Section 16, of the Constitution of 1921, have held this statute to be constitutional; that the purpose and effect of the act was to subject the rolling stock of foreign companies within Louisiana to state taxation; that the act refers specifically to owners of rolling stock who have no domicile in Louisiana.\textsuperscript{163} In brief, then, the federal view on this problem is to the effect that rolling stock of non-resident, non-domiciled owners, is subject to state taxation for state purposes, and the assignment of the Parish of East Baton Rouge as the parish in which

\textsuperscript{160} White Oil Corporation v. Flanagan, 153 La. 837, 96 So. 675 (1923); Simms Oil Co. v. Flanagan, 155 La. 565, 99 So. 450 (1924). But see Union Tank Line Co. v. Day, Sheriff, 143 La. 771, 79 So. 334 (1918), Constantin Refining Co. v. Day, 147 La. 623, 85 So. 613 (1920) which was overruled by Gulf Refining Co. v. Tillinghast, 152 La. 847, 94 So. 418 (1922). See also Opinions of Attorney General (1934-1936) 1306.

\textsuperscript{161} Simms Oil Co. v. Wolfe, 6 F. (2d) 504 (C.C.A. 5th, 1925).


the taxes are collected for state purposes is permissible under the constitution of the state.

There is still uncertainty on the part of the writer as to the law which governs in this kind of situation. As we said previously, the effect of the state decision is that the appointment of an agent effectuates a declaration of domicile under Act 9 of 1917 (Extraordinary Session), which was declared by Act 109 of 1921 (Extraordinary Session) to be in full force and effect where not inconsistent with the latter act. But under the federal circuit court decision, cited above, there is no domicil whatever where only an agent for service of process has been appointed.

Although it would seem the federal viewpoint is sound, the administrative authorities apparently assume that there is a split of authority on the problem, and prefer to abide by the state "decision" on the matter. So your writer has been told that for the past twenty years the authority to levy taxes upon the assessed value of such rolling stock has been accorded those local units of government which have been "declared" by the owners to be their domiciles—effectuated by simply appointing agents to receive process. Some of the consequences of such a procedure are at once amazing and inequitable. In most instances, parishes with low rates of levy or low valuations are selected as "domiciles," and more than frequently the agent appointed for service of process actually resides elsewhere.

A further consideration of Section 29 of Act 170 of 1898 discloses that jurisdiction to tax the real estate, road beds, roads, super-structures, et cetera, of railroads, canals, other transportation, telephone and telegraph companies belongs to the parish or assessment district where such property is located. The theory of property acquiring a taxable situs where located or operated is made applicable to ferry boats, tugs, vehicles of all kinds, et cetera, going between two or more parishes, with a division of taxable values among the two or several parishes, as the case may be. However, a great portion of this section is now obsolete by reason of the exemptions accorded gasoline driven vehicles and boats. And in one instance we find authority in an opinion by the Attorney General to the effect that water-craft belonging to a transportation company are assessed at the domicile of the company, though the property be located in another parish.

164. See supra note 79.
165. Supra note 152.
spurious basis for such an opinion was apparently the fact that the property was not in use at the time, although the language of the statute does not recognize that factor. However, in effect, the Attorney General has rebutted the reasoning of Gulf Refining Company v. Tillinghast, which stated that movable property permanently within the state but moving constantly from place to place, is assessable at the domicil of the owner where there are no statutes to the contrary.

The writer mentioned previously the fact that there has been no reported litigation to date on issues that might be raised in interpreting the 1932 amendments to Section 29 of Act 170 of 1898. This does not mean that the statute with clarity points the way to satisfactory apportionment or allocation of the property listed in this section. In fact the antithesis is the reality of the situation. For instance, it would seem that the taxpayers have no authority to apportion their property to the various local governments by way of the annual reports; but that this power of allocation should belong to the Tax Commission alone. Yet, in most of the annual reports required of the so-called utilities provision is made whereby the taxpayer allocates or apportions the property and unless the local authorities object, for one reason or another, the word of the taxpayer is accorded finality in specifying which of the local governments, as listed, are entitled to levy and collect taxes upon the assessed property.

This discussion then has lead us into the final phase of this paper—the system of certification and apportionment or allocation of the assessments to the various local assessors so that state and local taxes may be levied. After meeting in April, as provided by law, for the purpose of assessing for taxation the property belonging to the so-called utilities, the Tax Commission by means of certificates of assessment, returns to the local assessors the valuations and assessments of the property. These certificates, as they are called, in the final analysis, are the evidences of the values and the results of the apportionment of the property among the various local units of government. If the taxpayer seeks a reduction in assessment, suit must be brought on or before the first Monday of November of the year in which the assess-

167. Supra note 156.
168. The forms or schedules for the return of property to the Commission require the utilities to list property by parishes and municipalities.
ment is made, else the assessment is deemed final.\textsuperscript{170} Such a suit must be brought in a court of competent jurisdiction in the Parish of East Baton Rouge.\textsuperscript{171} But where the taxpayer complains that the assessment is null, no time limit is set for the institution of suit, nor must it be brought in the Parish of East Baton Rouge, the domiciliary parish of the Commission (or its predecessors).\textsuperscript{172} Whatever the reason for contesting the assessment, the burden is on the taxpayer to overcome the presumption that the assessment is a valid one.\textsuperscript{173}

By Act 120 of 1918 the State Board of Appraisers, the predecessors to the Tax Commission, was vested with the power to correct or change the assessment of any public service corporation or other property owner where the assessment was made directly by the Board.\textsuperscript{174} In Act 18 of the Second Extraordinary Session of 1934 this authority to change and correct assessments was extended to \textit{any and all} assessments of property, "in order to make said assessments conform to the true and correct valuations."\textsuperscript{175} The statute provides that such change or correction may be made by the Commission at any time before actual payment of the taxes. Too, it provides that notice must be given the taxpayer where an increase in assessment is made, so that he may exercise his right to contest the correctness of the change, as provided by the statute.\textsuperscript{176} This 1934 act had a repealing clause, so that the provisions of Act 120 of 1918 are superseded.

Assuming that the assessment of the property belonging to any one of the so-called utilities is uncontested, the final step, then, in the assessment process is the spreading of the valuations, as evidenced by the certificates of assessment, on the assessment rolls by the local parish assessor, so that state and local taxes may be levied and collected, according to law.

\textbf{CONCLUSION}

It has been the purpose of this paper to describe, both from


\textsuperscript{171} Supra note 169.

\textsuperscript{172} New Orleans Great Northern Railway Co. v. Thomas, Assessor, 129 La. 128, 55 So. 737 (1911). See Arkansas-Louisiana Pipe Line Co. v. Coverdale, 181 La. 117, 158 So. 640 (1935).

\textsuperscript{173} Supra note 129.

\textsuperscript{174} See Southern Amusement Co. v. City of Jennings, 180 La. 800, 157 So. 720 (1934).

\textsuperscript{175} See supra note 11.

\textsuperscript{176} There was no provision for the giving of notice in La. Act 120 of 1918 [Dart's Stats. (1939) §§ 8419-8422].
administrative and legal viewpoints, the present situation in the field of assessment for purposes of ad valorem property taxation of the so-called public utilities in the state. The writer is not concerned by the thought that she has left the reader confused and perplexed, for certainly such is the status of the law of Louisiana in the field of ad valorem property assessment of "public utilities."

For years the general property tax has been under attack in this country. Many theoretical solutions and substitutional systems have been suggested, but it seems that this kind of system, whatever its faults, is still predominant throughout these United States. If the general property tax is to be continued in this state as to public utilities, the administrative authorities are in accord that the obsolete statutes should be eliminated in a careful revision and the writer suggests that the actual administration of the system should then be made to conform more closely to the positive law.