

DELEGATE CASE: If you mean the exemptions for corporation inventory, machinery and tools — is that the kind of exemptions you mean?

THE CHAIRMAN: Delegate Miller.

DELEGATE B. MILLER: I do not mean that. I mean the type of exemption which the B&O Railroad now enjoys.

DELEGATE CASE: It is the only one of its kind.

DELEGATE B. MILLER: Are you sure?

DELEGATE CASE: My understanding is that there were two, Greenmount Cemetery and the B&O Railroad. The Greenmount Cemetery exemption has expired, so that the B&O is the only one that has it.

I believe there will be at a later time more discussion on that in another section of our deliberations.

THE CHAIRMAN: Delegate Miller.

DELEGATE B. MILLER: You intend to make a further report?

DELEGATE CASE: We do not, Delegate Miller, but it is my understanding — and I will be corrected by the Chair on this — that there will be something put in the constitution on this point.

THE CHAIRMAN: There is a matter pending before another committee, the matter just spoken about.

Delegate Henderson.

DELEGATE HENDERSON: Returning to the farm exemption again, although a great deal has been said about it, is it your view that there could be a valid classification so that a farmer who continues farming only for the purpose of making capital gain in five or ten years due to the appreciation of his land and suitability for development purposes, and the developer who buys the farm and continues to farm it with the same motive would pay a different rate of taxation — one would be three times the value of the other?

DELEGATE CASE: Judge Henderson, what I said was that a criteria could be written which might — and I underscore the word "might" — lead to that result, if the finders of fact found it to be justified.

Let me say this, sir: In the present law — and I will be glad to read it to you verbatim, if you care to listen to it — there are twenty-nine criteria which the State Taxation Commission or the State

Department of Assessments and Taxation suggested as being tests. In addition to that, there are four criteria in the statute. Additionally, there is a statement of general purpose in the statute.

Now, you, as a long-time distinguished jurist know, as I think I know, that where you have fact questions what you seek to do is to test the existing facts as they are brought forth in the record with the tests, or match them up with the tests which the legislature and the administrative body has set, and then you reach a judgment, and sometimes — and I cannot say this in this particular field, because we have had no experience with it as the Court of Appeals ruled out the right to make such judgments in the Alsop case, but in other cases the valuation of stock in closely held corporations, for example, the determination of the applicability of the internal revenue code, section 5.31, you find in almost identical situations the court going in different directions.

What we seek to do is to give the General Assembly in the first instance, and the administrative agency in the ultimate instance, the freedom to make meaningful judgments so that the bona fide farmer will be protected, but the obvious land speculator will not.

DELEGATE HENDERSON: I take it what you are saying is that you do believe that a valid constitutional distinction can be drawn between a farmer who does want the same thing as the speculator, even though they may both be speculating. Is that true?

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: I am not saying it is a constitutional distinction. I am saying we are establishing a classification which we are defining by the use of the words "agricultural use."

Now, that is as far as the Constitution goes. What is agricultural use depends in the first instance upon the judgment made by the administrative board, but in the last analysis, of course, by the courts interpreting that judgment, whether it be right or wrong.

THE CHAIRMAN: Delegate Case, if the Chair may paraphrase Delegate Henderson's last question so that the record may be clear, I think he was suggesting that if you had two pieces of property as to which the fact situations with respect to character of property and uses were identical and as to which the fact situations were identical in all other respects ex-