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EFFECT OF CURATIVE STATUTES ON TAXATION IN ILLINOIS

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CERTAIN PROBLEMS which plague the members of the Illinois General Assembly are so recurrent that their consideration becomes a matter of routine at every session. The legislature hardly has time to convene before a series of bills are proposed, sponsored by interested municipalities and other taxing bodies, designed to cure defects and errors which have arisen in the process of levying taxes in the interim between the previous session and the current one. The constant request for legislative assistance evokes a query as to whether the taxing officials of the state should not be skilled, by this time, in the processes of taxation so as to be able to avoid such mistakes, but so long as each session brings statutory modification in the fundamental laws, and so long as taxing statutes are as complicated as they are, it is not surprising that errors do creep in. If the taxing machinery were operated by lawyers experienced in detailed statutory requirements, the picture might be different. But many taxing bodies perform their functions on the basis of information handed down by predecessors in office, often completely ignorant of changes in the taxing laws, hence necessity for the frequent resort to curative statutes in an effort to avoid a complete breakdown in the sources of revenue.

The steps which taxing authorities must follow are hedged in by statutory requirements and the possibilities for error are great. When they are multiplied by the thousands of taxing districts in Illinois, the magnitude of the problems which can be created is apparent, but attention to a few fundamental facts will quickly reveal whether pitfalls can be avoided or, if not, whether the effect of falling therein may be overcome by the adoption of curative statutes. It should first be noted that authority to levy any tax at all must rest in statutory grant of

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power, constitutionally conferred by the legislature on the taxing body. In the absence thereof, no tax levy could stand. The municipalities of the state, at least in cases of organized districts having less than 500,000 inhabitants, gain their authority through certain sections of the Cities and Villages Act. The first of these specifies that the municipal authorities, within the first quarter of the fiscal year, shall pass an annual appropriation ordinance in proper form¹ which shall have been published, after adoption, in the manner required by law.² When the total amount of the annual appropriation has thus been determined, the municipal authorities are then obliged, on or before the date prescribed by statute,³ to adopt a levy ordinance placing the burden of the sums appropriated upon the taxable property in the municipal area. Certification of these ordinances to the county officials results, in due time, in the making of assessments and the issuance of tax bills.

Any failure to follow the general method outlined endangers the collection of needed revenue and, if deviation occurs at what may be regarded as jurisdictional points in the process, the tax levy may be entirely void. If no protest is made, the taxpayer who has discharged his obligation to his government is prevented from complaining of any error in the taxing process. It is the alert taxpayer, however, who will scan the municipal operation closely and, not infrequently, uncover some defect upon which to resist collection of the tax imposed. To offset this challenge, or even the threat thereof, the municipal authorities seek recourse to the curative statute which the obliging legislature enacts.

The term "curative act" is occasionally used to refer to statutes designed to have prospective operation, that is to remedy errors which have not yet occurred and which may arise in the future. Illinois has long had one statute of that character,⁴ de-

¹ Ill. Rev. Stat. 1947, Ch. 24, § 15—1.

² *Ibid.*, Ch. 24, § 10—3.

³ *Ibid.*, Ch. 24, § 16—1.

⁴ *Ibid.*, Ch. 120, § 177. It is a re-enactment of Section 191a of the Revenue Act of 1872. A discussion of the scope thereof may be found in a note in 32 Ill. L. Rev. 456.

signed to take care, automatically, of any of the irregularities to which it may apply. Many defects, merely formal in nature, constitute no threat to the validity of the taxing procedure because of the presence thereof. Thus this statute, or its predecessor, has been held to legalize an indefinite description of land or the omission of the words "dollars" and "cents" from the assessment roll;⁵ the listing of property in the wrong book;⁶ the failure of a town clerk to certify the levy to the county clerk at the proper time;⁷ the oversight of the assessor to set down the full value of the property as the assessed value;⁸ the assessing of property in the wrong name;⁹ or other like defects.¹⁰

In general, however, curative statutes in Illinois have generally been designed to possess retroactive operation, serving to correct errors, if operating to cure errors at all, that have already taken place. In fact, the Illinois Supreme Court once said, in the case of *People v. Illinois Central Railroad Company*,¹¹ that "curative acts do not authorize the doing of anything in the future, and the very nature of such acts must be and is wholly retrospective. They relate solely to actions that have been performed and legalize the same."¹² In the light of that statement, and bearing in mind that the general curative statute above referred to is designed to deal with defects, errors and other informalities which do not affect the "substantial justice of the levy," it is apparent that the term "curative statute," as most frequently used in Illinois, applies to enactments intended to be

⁵ *People v. Brown*, 261 Ill. 73, 103 N. E. 559 (1913).

⁶ *Wabash, St. L. & Pac. R. Co. v. Johnson*, 108 Ill. 11 (1883).

⁷ *Thatcher v. People*, 79 Ill. 597 (1875).

⁸ *People v. Fleming*, 355 Ill. 91, 188 N. E. 818 (1933).

⁹ *Mich. Cent. R. R. Co. v. Carr*, 303 Ill. 354, 135 N. E. 881 (1922); *People v. Illinois Cent. R. Co.*, 307 Ill. 265, 138 N. E. 593 (1923).

¹⁰ *Eurigh v. People*, 79 Ill. 214 (1875).

¹¹ 301 Ill. 288, 133 N. E. 779 (1921).

¹² 301 Ill. 288 at 297, 133 N. E. 779 at 782. See also *People v. Kinsey*, 294 Ill. 530, 128 N. E. 561 (1920). In *People v. C. B. & Q. R. R. Co.*, 305 Ill. 567 at 568, 137 N. E. 392 at 393 (1922), the court said: "The object of a curative act is not to change the law governing future action, but to waive some requirement of the law affecting past action."

retrospective in operation¹³ and planned to cure those defects which do affect the "substantial justice" of the tax levy.

Absence of an appropriation ordinance in force at the time of the levy, for example, could hardly be considered an "error or informality" within the meaning of the general curative statute¹⁴ and, even if it were, lack of publication thereof could scarcely be considered aided by the statute for its purports to amend not to supply original action, without which there is nothing to be amended. The problem, then, is to ascertain how far the legislature may go in passing curative measures falling within the second category, that is those enacted after the error of substance has occurred.

The power of a legislature to validate defective tax proceedings by the enactment of retroactive statutes, while universally recognized,¹⁵ is not without restraint for no statute can stand which contravenes constitutional limitations. Illinois, in harmony with other states, will not sanction curative acts which impair vested rights, as where a taxpayer has changed his position before attempt has been made to cure the defect,¹⁶ or which purport to interfere with the proper exercise of the judicial power, as by seeking to upset a judicial declaration of tax invalidity pro-

¹³ Special curative acts have been employed, however, to cure merely formal defects which were probably legalized anyway by Ill. Rev. Stat. 1947, Ch. 120, § 717. See, for example, *People v. I. C. R. R. Co.*, 301 Ill. 288, 133 N. E. 779 (1921), where a validating act remedied the failure of a school board to return certificates of levy at a proper time, and *People v. Millard*, 307 Ill. 556, 139 N. E. 113 (1923), where a resolution, defective because passed at an improperly called meeting, was validated by a curative act and the levy was saved.

¹⁴ In *C. & N. W. Ry. Co. v. People*, 193 Ill. 594 at 598, 61 N. E. 1100 at 1101 (1901), the court said: "The substantial justice of a tax is affected if it is one which the authorities attempting to impose it have no power or right to impose. Provisions of the statute designed for the protection of the taxpayer are mandatory, and a disregard of them will render the tax illegal." It therefore held that Section 191a of the Revenue Act of 1872, now Ill. Rev. Stat. 1947, Ch. 120, § 717, did not operate to validate a levy made at a time when the commissioners had no authority. See also *People v. McElroy*, 248 Ill. 574, 94 N. E. 81 (1911), where the same section was held not to save a tax when the appropriation ordinance was not enacted or published within the first quarter of the fiscal year as required by a statute, the provisions of which were deemed mandatory.

¹⁵ See annotation to *People ex rel. Larson v. Thompson*, 377 Ill. 104, 35 N. E. (2d) 355 (1941), in 140 A. L. R. 959.

¹⁶ *Conway v. Cable*, 37 Ill. 82 (1865).

nounced before passage of the statute.¹⁷ To permit statutes of that character to stand would be to deprive the taxpayer of property without due process of law. In addition to such general prohibitions, the Illinois Constitution of 1870 contains a restraint, not frequently found elsewhere, prohibiting the legislature from imposing taxes on the municipality or its inhabitants for corporate purposes.¹⁸ This limitation, at times, has been found to serve as a basis for declaring curative acts ineffective¹⁹ but upon reasoning which has been limited to this state and which has not found favor elsewhere.²⁰

So long as no constitutional prohibition is invaded, the Illinois Supreme Court has been willing to recognize that the legislature may, by curative act, validate any proceeding which it might have authorized in advance.²¹ While this principle has been stated rather frequently, it should not be accepted entirely at its face value for it would seem to indicate that the legislature has the power to waive any procedural requirement, at some future time, since almost all the taxing procedure is prescribed by the legislature. A succession of cases, however, has served to prove that the legislature has no such sweeping power for it has been denied the right to provide a cure where there was (1) a funda-

¹⁷ See *C. & E. I. R. R. Co. v. People*, 219 Ill. 408, 76 N. E. 571 (1905). where it was held that, after a decision invalidating a tax for failure to itemize its purposes, the legislature had no power to cure the defect.

¹⁸ Ill. Const. 1870, Art. IX, § 10.

¹⁹ See cases listed in note 29, post.

²⁰ In a note in 32 Ill. L. Rev. 456, at 471, it is stated that, of nine states having constitutional provisions similar to that in Illinois, in two such states where the question arose the Illinois interpretation was rejected. Curative acts were there regarded not to amount to an "imposition" of a tax by the legislature contrary to constitutional prohibition: *Weber v. City of Helena*, 89 Mont. 109, 297 P. 455 (1931); *Owings v. City of Olympia*, 88 Wash. 289, 152 P. 1019 (1915).

²¹ See *Owens v. Green*, 400 Ill. 380, 81 N. E. (2d) 149 (1948). *Cooley*, Const. Lim., 8th Ed., p. 775, states: "If the thing wanting, or which failed to be done, and which constitutes the defect in the proceedings is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by subsequent statute. And if the irregularity consists in doing some act, or in the mode or manner of doing some act, which the legislature might have made immaterial by prior law, it is equally competent to make the same immaterial by a subsequent law." The latter sentence comes close to statements of the Illinois Supreme Court which emphasize that the defect is curable if it relates to a mere immaterial irregularity, a formal defect, or one not necessary to the exercise of the power. See cases cited in notes 37 to 41 inclusive, post.

mental lack of power to act,²² (2) where there was no jurisdiction to tax,²³ or (3) where the entire tax proceeding was void.²⁴ It is not too clear how the court could distinguish between these three situations, but the conclusion is apparent from the holdings that almost all of the attempts to cure what might be regarded as defects of a serious nature and which might come under one or more of these heads have been ineffective.

By way of illustration, one need consider only a few of the decisions on the subject. In the case of *People ex rel. Ward v. Chicago & Eastern Illinois Railway Company*,²⁵ for example, the board of supervisors had levied a tax, on December 12, 1934, for Vermillion County although the statute required that the tax levy should be made prior to December 1st. The legislature, by an act approved on January 17, 1935, purported to grant to such county boards as had omitted to levy by the proper date the authority to make another levy²⁶ while also providing, through another statute, that levies made after the first day of December were valid.²⁷ The court held the curative act void, stating at the time

The legislature may by statute validate the irregular or defective exercise of a power where the power already existed and the proceeding sought to be cured was not one of the fundamentals of the power exercised. However, the General Assembly cannot give validity to the exercise of a power where such assumed power did not exist at the time it was purported to have been exercised. The power to levy a tax

²² *People v. Thompson*, 377 Ill. 104, 35 N. E. (2d) 355 (1941); *People v. Baum*, 367 Ill. 249, 11 N. E. (2d) 373 (1937); *People v. C. & E. I. Ry. Co.*, 365 Ill. 202, 6 N. E. (2d) 119 (1936); *People v. Public Service Co.*, 328 Ill. 440, 159 N. E. 797 (1928); *People v. C., M. & St. P. Ry. Co.*, 310 Ill. 428, 141 N. E. 827 (1923); *People v. Ill. Cent. R. R. Co.*, 310 Ill. 212, 141 N. E. 822 (1923).

²³ *People v. C. & E. I. Ry. Co.*, 365 Ill. 202, 6 N. E. (2d) 119 (1936).

²⁴ *People v. Dearborn St. Bldg. Corp.*, 372 Ill. 459, 24 N. E. (2d) 373 (1939); *People v. Southern Ry. Co.*, 367 Ill. 389, 11 N. E. (2d) 602 (1937); *People v. Wabash Ry. Co.*, 360 Ill. 173, 195 N. E. 665 (1935); *People v. Bell*, 309 Ill. 387, 141 N. E. 187 (1923); *People v. C., M. & St. P. Ry. Co.*, 321 Ill. 499, 152 N. E. 560 (1926).

²⁵ 365 Ill. 202, 6 N. E. (2d) 119 (1937).

²⁶ Laws 1935, p. 685; H. B. No. 5.

²⁷ *Ibid.*, p. 685; H. B. No. 4.

by an administrative body is jurisdictional. Jurisdiction to act cannot be conferred by subsequent legislative acts where the assumed power to act was lacking at the time the purported proceeding was had.²⁸

It also found that the attempted validation fell afoul of the constitutional restraint aforementioned in that the result, if upheld, would amount to the legislative imposition of a tax for corporate purposes.²⁹

It may be noted that the court, when speaking of the "power to levy," was not referring to an actual lack of authority on the part of the board of supervisors for it is plain that the taxing function had been validly delegated to that body. What happened in the case might more nearly be described as a defect in procedure in the carrying out of that power. Such defects, however, are not uncommonly referred to by the court as illustrating a "lack of power to act." In this respect, one should bear in mind that the phrase "lack of power" possesses a different significance and has a contrasting meaning with the same phrase when used in other municipal affairs for it then refers to a complete absence of grant of authority from the legislature to the municipal corporation to indulge in the given activity.

In another case, that of *People ex rel. Larson v. Thompson*,³⁰ a forest preserve district passed an appropriation ordinance on July 18, 1939, but failed to publish the same until the following September 8th. The levy ordinance was passed on September 15th. The law required publication of the appropriation ordinance within ten days after its passage but declared that the ordinance provisions should not become effective until ten days

²⁸ 365 Ill. 202 at 207, 6 N. E. (2d) 119 at 122.

²⁹ See also *People v. Pennsylvania R. R. Co.*, 375 Ill. 85, 30 N. E. (2d) 739 (1940); *People v. Orvis*, 374 Ill. 536, 30 N. E. (2d) 28 (1940); *People v. C. & E. I. Ry. Co.*, 343 Ill. 101, 175 N. E. 4 (1931); *People v. Public Service Co.*, 328 Ill. 440, 159 N. E. 797 (1928); *People v. C., M. & St. P. Ry. Co.*, 321 Ill. 499, 152 N. E. 560 (1926); *People v. E., I. & St. L. Ry. Co.*, 312 Ill. 134, 143 N. E. 431 (1924); *People v. Ill. Cent. R. R. Co.*, 310 Ill. 212, 141 N. E. 822 (1923). All cases listed in notes 22, 23, 24, 25, 26 and this one were cases which decided that curative acts were incapable of validating defective levies.

³⁰ 377 Ill. 104, 35 N. E. (2d) 355 (1941).

after publication.³¹ Again the legislature enacted a curative statute clearly intended to fit the case for it specified that such levies were valid "notwithstanding that the publication of the appropriation ordinance occurred more than ten days after its passage and notwithstanding that the tax levy ordinance was passed within ten days after the publication of the appropriation ordinance."³² The court accepted the contention that the requirement for publication within ten days after passage was a directory one only, except that the appropriation measure could not become effective until ten days after its eventual publication. But it went on to find that the levy was void because passed at a time when no enforceable appropriation ordinance existed. That position was achieved by virtue of the fact that the appropriation ordinance was considered not legal until September 18th, or three days after the purported levy had been made.³³ The court again adverted to the proposition that the district was absolutely without authority under the circumstances and reiterated that no validating act could cure a "lack of authority to act at all."³⁴ In effect, it accused the legislature of attempting to confer the power to levy posthumously as well as of violating the state constitution.³⁵

³¹ Ill. Rev. Stat. 1939, Ch. 57½, § 12.

³² Ill. Rev. Stat. 1941, Ch. 57½, § 15d.

³³ In *People v. Wabash Ry. Co.*, 360 Ill. 173, 195 N. E. 665 (1935), the court held that a tax levy ordinance was void because not passed at a time when there was a valid appropriation ordinance in force, since both ordinances were passed by the village board at the same meeting, and the appropriation ordinance would not be in force until 10 days after its publication. Accord: *People v. C., C. C. & St. L. Ry. Co.*, 281 Ill. 152, 118 N. E. 1 (1917); *People v. P. D. & E. R. R. Co.*, 116 Ill. 410, 6 N. E. 459 (1886). A levy has been declared void, even when made after the appropriation ordinance, if the latter has not been published as required by statute, the publication being in a foreign language newspaper: *People v. Day*, 277 Ill. 543, 115 N. E. 732 (1917). So a tax levy ordinance passed before the appropriation ordinance has been published is clearly void: *People v. Florville*, 207 Ill. 79, 69 N. E. 623 (1903). Where the appropriation ordinance is published the day after the levy ordinance is passed, the levy is void for lack of a valid appropriation ordinance: *People v. Wabash R. R. Co.*, 387 Ill. 450, 56 N. E. (2d) 820 (1944). See also *People v. I. C. R. R. Co.*, 396 Ill. 200, 71 N. E. (2d) 39 (1947).

³⁴ 377 Ill. 104 at 113, 35 N. E. (2d) 355 at 359. It might be questioned whether this situation is one where the phrase "lack of authority to act at all" is technically accurate. However, levies have been uniformly held void for that reason, apparently on the reasoning that the power to levy is not conferred on the taxing body until it has first properly passed and published an appropriation ordinance.

³⁵ See also *People v. Ill. Cent. R. R. Co.*, 310 Ill. 212, 141 N. E. 822 (1923), holding the curative act of May 31, 1923, Laws 1923, p. 566, incapable of validating

Logically, the constitutional argument should be the real basis for the decision so long as the court adheres to the interpretation it has placed on Article IX, Section 2 of the state constitution. But, for some reason, the court prefers to find the curative act invalid because of the general principle that curative acts are inherently incapable of supplying a missing power and then links up that conclusion with the constitutional issue. The former rests upon a void proceeding for its force. The latter more nearly turns on a "lack of power" or, what sometimes seems to be the equivalent in this regard, a "lack of jurisdiction" to tax.

In contrast, there have been cases in which curative acts have been upheld on the rationale that the error corrected was over a matter which the legislature "might have dispensed with in the first place."³⁶ Thus insufficient itemization³⁷ or failure to itemize the particular purpose of the tax levy at all³⁸ may be validated; defects produced by the fact that the tax was levied at an unauthorized meeting have been cured;³⁹ uncertainties in the statement of purpose for the levy have been rectified;⁴⁰ and defective schedules of claims have been remedied.⁴¹ The superficial explanation for such results may rest in an expression of the court, to be found in the case of *People ex rel. Pearsall v. The Chicago, Milwaukee & St. Paul Railway Company*,⁴² to the effect that the legislative power "to validate by curative law any

a tax levy made without first obtaining written consents of the town auditor at a proper meeting as required by statute. The act was found to violate Ill. Const. 1870, Art. IX, § 10.

³⁶ See note 21, ante.

³⁷ A curative act validated the tax levy in *People v. Mercil & Sons Co.*, 378 Ill. 142, 37 N. E. (2d) 839 (1941), where insufficient itemization had occurred, since this was regarded merely as a defective exercise of a power existing in the city.

³⁸ Failure to itemize does not go to the fundamental right to levy, so this defect may be validated according to *People v. C., M. & St. P. R. R. Co.*, 324 Ill. 43, 154 N. E. 472 (1926). Accord: *People v. C., B. & Q. R. R. Co.*, 323 Ill. 536, 154 N. E. 468 (1926); *Bowyer v. People*, 220 Ill. 93, 77 N. E. 91 (1906); *People v. Wis. Central R. R. Co.*, 219 Ill. 94, 76 N. E. 80 (1905).

³⁹ *People v. Millard*, 307 Ill. 556, 139 N. E. 113 (1923).

⁴⁰ *People v. Hamilton*, 373 Ill. 124, 25 N. E. (2d) 517 (1940).

⁴¹ *People v. Southern Ry. Co.*, 367 Ill. 389, 11 N. E. (2d) 602 (1937).

⁴² 310 Ill. 428, 141 N. E. 827 (1923).

proceeding which it might have authorized in advance is limited to the case of irregular exercise of power."⁴³

Reference to "irregular exercise of power," just as is true with the phrase that the legislature may cure that which it "might have dispensed with in the first place," is essentially meaningless in describing the errors which may be cured for there are few requirements which the legislature could not have dispensed with had it chosen, while "irregular exercise" includes practically anything which a taxing body could do in the wrong, as well as the right, way. But even if the expressions be faulty, the idea that things not necessary to the exercise of the power may be waived is a valuable one to be set in contrast with the other concept that "lack of jurisdiction" may not be overcome.

Aside from having cured occasional minor defects of the kind above referred to, curative acts have met with little success in Illinois. Errors in proceedings which affect the substantial justice of the tax⁴⁴ have generally been held incurable by validating statutes and, in some cases, the validating statutes themselves have been held unconstitutional.⁴⁵ Other cases have resulted in declarations by the court that it would not assume that the legislature had attempted to do that which it had no authority to do, so no effort was made to apply the curative act to the invalid proceeding it was designed to correct.⁴⁶ Taxes levied at an un-

⁴³ 310 Ill. 428 at 429, 141 N. E. 827 at 828.

⁴⁴ See note 14, ante. A failure to itemize is more than an irregularity which may be overlooked under Ill. Rev. Stat. 1947, Ch. 120, § 717, but is such an irregularity that may be cured by a validating act "because the legislature might have dispensed with the requirement in the first place." This defect has been held not to go to the power to levy, even though it did affect the substantial justice thereof, in *People v. C., M. & St. P. R. R. Co.*, 324 Ill. 43, 154 N. E. 472 (1926).

⁴⁵ See *People v. C. & E. I. Ry. Co.*, 312 Ill. 216, 143 N. E. 464 (1924); *People v. T., St. L. & W. R. R. Co.*, 312 Ill. 201, 143 N. E. 417 (1924); *People v. E. I. & St. L. Ry. Co.*, 312 Ill. 134, 143 N. E. 431 (1924); *People v. C. & N. W. Ry. Co.*, 312 Ill. 58, 143 N. E. 460 (1924); *People v. Wabash Ry. Co.*, 311 Ill. 579, 143 N. E. 488 (1924); *People v. Ill. Cent. R. R. Co.*, 311 Ill. 113, 142 N. E. 473 (1924); *People v. C., M. & St. P. Ry. Co.*, 310 Ill. 428, 141 N. E. 827 (1923); *People v. Ill. Cent. R. R. Co.*, 310 Ill. 212, 141 N. E. 822 (1923). These cases all hold unconstitutional the act of May 31, 1923, purporting to validate an additional tax levy made without the consent of the town auditors.

⁴⁶ *People v. Dearborn St. Bldg. Corp.*, 372 Ill. 459, 24 N. E. (2d) 373 (1939); *People v. C., B. & Q. R. R. Co.*, 310 Ill. 495, 142 N. E. 176 (1924).

authorized excess rate have failed for want of an efficient cure.⁴⁷ The failure to obtain written consents of town auditors at proper meetings, as required by statute, has not been remedied by validating statute.⁴⁸ A bond issue, void because approved by voters at an election called on improper notice, has likewise failed despite legislative attempts to validate.⁴⁹ For that matter, an attempt to make valid a bond issue, where the petition requesting the election on the proposition did not contain a sufficient number of signatures, has been turned down even though a majority of the voters at the election had favored the issue.⁵⁰ Certainly, then, where there is no valid organization of the taxing district, any attempt to validate the levy of such an organization would necessarily fail, for the power to tax never existed.⁵¹

It is apparent, then, that the Illinois Supreme Court has taken a dim view of attempts by the legislature to counteract the mistakes and omissions of the taxing authorities. It is somewhat difficult to see upon what principle of justice a person may be allowed to avoid his obligation to contribute to the support of his local governmental unit merely because of oversight, accident, or technical error on the part of the taxing officials. Rarely is there a question of vested interests presented but, so long as the court pursues its former views, those who object are relieved of the tax burden while others, who do not, suffer added injury by being forced, in subsequent years, to make up for the taxes lost to the successful objector.

There may be occasion to hope, however, that the court might change its views on the subject of the validity of curative stat-

⁴⁷ The curative act of June 26, 1923, Laws 1923, p. 265, could not validate a tax levied at an unauthorized excess rate since doing so would violate Ill. Const. 1870, Art. IX, § 10, according to *People v. Ill. Cent. R. R. Co.*, 310 Ill. 212, 141 N. E. 822 (1923). Accord: *People v. Baum*, 367 Ill. 249, 11 N. E. (2d) 373 (1937).

⁴⁸ See note 35, ante.

⁴⁹ *People v. Ervin*, 375 Ill. 435, 31 N. E. (2d) 789 (1940).

⁵⁰ See *People v. Riche*, 396 Ill. 85, 71 N. E. (2d) 332 (1947); *People v. Miller*, 392 Ill. 445, 64 N. E. (2d) 869 (1946); *People v. C. & N. W. Ry. Co.*, 391 Ill. 145, 62 N. E. (2d) 460 (1945); *People v. B. & O. R. R. Co.*, 385 Ill. 86, 52 N. E. (2d) 255 (1944); *People v. C. G. W. R. R. Co.*, 379 Ill. 594, 41 N. E. (2d) 960 (1942); *People v. Thompson*, 377 Ill. 244, 36 N. E. (2d) 351 (1941).

⁵¹ *Maulding v. Skillet Fork Drain. Dist.*, 313 Ill. 216, 145 N. E. 227 (1924).

utes. As late as 1948, in the case of *Owen v. Green*,⁵² the Supreme Court made a statement which may recast the whole theory of curative acts into a single formula. It there said

Where there is no constitutional prohibition, the legislature may, by curative act, validate any proceeding which it might have authorized in advance. The principal, if not the only, exception to legislative power to ratify . . . is in tax levy cases where section 10, article IX of the Constitution precludes the enactment of a curative act.⁵³

If that formula is followed, tax cases need not be complicated in the future, as has been the case in the past, by distorted attempts to rationalize a result inconsistent with the general rule governing the validity of curative statutes.

It is possible, in the not too distant future, that there may be occasion for the court to give substance to that formula if it feels so inclined for a serious problem looms over the revenues of many of the taxing units of the state. The problem grows out of the fact that, in 1947, the legislature amended Section 10-3 of the Cities and Villages Act. Prior to amendment, the statute required that all ordinances designed to impose any fine, penalty, imprisonment, or forfeiture, as well as those which made any appropriation, should be printed in book or pamphlet form by the corporate authorities *or* they should be published at least once in a newspaper published in the city or village, *or* should be posted, if no newspaper was published therein, all within one month after passage.⁵⁴ Emphasis is given to the word "or" since the law then clearly contemplated alternative forms for giving notoriety to the intended ordinance. By the amendment adopted in 1947, publication was permitted in any newspaper of general circulation distributed in the municipality even though not published therein, but posting was permitted in municipalities having less than 500 population. The period for publica-

⁵² 400 Ill. 380, 81 N. E. (2d) 149 (1948).

⁵³ 400 Ill. 380 at 403-4, 81 N. E. (2d) 149 at 162.

⁵⁴ Ill. Rev. Stat. 1945, Ch. 24, § 10-3.

tion was also shortened from one month to ten days,⁵⁵ so as to conform the publication period to that found in other statutes regulating certain particular governmental units.⁵⁶ But, whether intentionally or not, the amended statute, as passed, contained the word "and" where previously had appeared the word "or," so that ordinances of the type mentioned, after 1947, should be both printed in pamphlet form *and* be published in the manner indicated.

Judging by the haste with which the legislature acted at its last session, many taxing authorities in the state must have failed to notice the minute but tremendously significant change thus caused. It can only be supposed that substantial amounts of revenue must have been in jeopardy, for the legislature not only recast Section 10-3 of the Cities and Villages Act, replacing "and" with "or" and making the amendment an emergency measure,⁵⁷ but also tried to fill the breach with a curative statute designed to validate all appropriation and levy ordinances passed in the interim between the 1947 and the 1949 sessions.⁵⁸ In general, the curative act purports to make valid not only all taxes levied despite failure to publish in the form required but also those where publication of the annual appropriation ordinance preceded the levy ordinance by only ten days. The problem, of course, is whether this curative act, resembling other statutes of the past, will prove to resemble them also in failing to provide the hoped-for solution.

If the present court, when faced with tax objections based upon municipal failure to comply with the requirements of Section 10-3 of the Cities and Villages Act as it stood before its

⁵⁵ Ill. Rev. Stat. 1947, Ch. 24, § 10-3.

⁵⁶ See, for example, Ill. Rev. Stat. 1939, Ch. 57½, § 12.

⁵⁷ Laws 1949, p. —: H. B. No. 49, § 1. See also Smith-Hurd Stats. Ann., cum. supp. June 1949, p. 44. Section 2 thereof states that whereas, "in order to prevent an unnecessary and great expense and a serious embarrassment in the administration of municipal affairs, cities and villages must be immediately relieved of the requirement heretofore existing that certain ordinances be published both in book or pamphlet form and in certain newspapers, an emergency exists and this act shall take effect upon its becoming a law." The phrasing conceals, but still suggests, the thought that duplicate publication was probably not intentionally imposed on municipalities.

⁵⁸ Laws 1949, p. —: H. B. No. 623, §§ 1 and 2. See also Smith-Hurd Stats. Ann., cum. supp. June 1949, p. 57; Ch. 24, §§ 697e2 and 697e3.

recent re-amendment, follows in the footsteps of its predecessors it can only conclude that the curative act is a nullity. Reference need only be made to the case of *People ex rel. Larson v. Thompson*⁵⁹ to sustain that conclusion, for it was there held that a curative measure designed to validate both an appropriation ordinance, void for want of publication at the proper time, and the ensuing levy ordinance, void because not preceded by a valid appropriation ordinance, was totally ineffective to cure either. If further ammunition is needed, reference to the decisions previously noted on the inability of the legislature to retroactively confer the power to levy a tax should be all that should be necessary. The prospects of success for the measure in question are, therefore, quite dim.

But the opportunity will no doubt be presented for the court to strike out afresh on the subject if it so wishes. It may elect to confirm the formula of *Owen v. Green*⁶⁰ and conclude that there is no constitutional restraint upon a measure of this kind. It may rationalize that "and" means "or," and vice versa, when the subject warrants it. It may realize the governmental necessity for revenue as well as the calamity which could ensue from a wholesale deprivation of taxes,⁶¹ and produce a decision not in keeping with those cited. There is reason to believe, however, that it should re-interpret the Illinois Constitution in this respect to find, as have other courts,⁶² that there is no constitutional vice in curative statutes remedying defects in taxation in the absence of a clear-cut deprivation of property without due process of law.

⁵⁹ 377 Ill. 104, 35 N. E. (2d) 227 (1941).

⁶⁰ 400 Ill. 380, 81 N. E. (2d) 149 (1948).

⁶¹ When a defect threatened to invalidate a great number of tax proceedings in Illinois on a prior occasion, the abstract principle of limitation on the scope of curative statutes was overcome by such necessity: *People v. N. Y. Central R. R. Co.*, 282 Ill. 11, 118 N. E. 462 (1917). A statute providing for the organization of school districts was there held unconstitutional but the validating statute was allowed to stand. The defect certainly went to the jurisdiction of the taxing body to act at all. Other cases involving the same statute are *People v. Kessler*, 282 Ill. 16, 118 N. E. 493 (1917); *People v. Leigh*, 282 Ill. 17, 118 N. E. 495 (1917); *People v. New York C. R. R. Co.*, 282 Ill. 19, 118 N. E. 481 (1917); *People v. Matthews*, 282 Ill. 85, 118 N. E. 481 (1917); *People v. K. & S. R. Co.*, 282 Ill. 541, 118 N. E. 753 (1918); *People v. P., C. C. & St. L. R. Co.*, 284 Ill. 87, 119 N. E. 914 (1918); *People v. C. & A. R. R. Co.*, 285 Ill. 232, 120 N. E. 454 (1918). Three justices dissented in the Matthews case on the ground that the curative act violated the state constitution.

⁶² For related cases from other jurisdictions, see annotation in 140 A. L. R. 959.