

In the

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Supreme Court of the United States

JOHN L. HILL,
ATTORNEY GENERAL OF TEXAS,)

Petitioner,)

v.)

MICHAEL L. STONE ET AL)

No. 73-1723

Washington, D. C.
January 14, 1975

Pages 1 thru 56

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IN THE SUPREME COURT OF THE UNITED STATES

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JOHN L. HILL, ATTORNEY GENERAL :
OF TEXAS, :
 :
Appellant :
 :
v. : No. 73-1723
 :
MICHAEL L. STONE ET AL :
 :
----- X

Washington, D. C.

Tuesday, January 14, 1975

The above-entitled matter came on for argument
at 2:14 o'clock p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR. Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

DAVID M. KENDALL, ESQ., First Assistant Attorney
General of Texas, Austin, Texas
For the Appellant

DON GLADDEN, ESQ., 702 Burk Burnett Building, Fort
Worth, Texas
For the Appellees

C O N T E N T SORAL ARGUMENT OF:PAGE:

DAVID M. KENDALL, ESQ.,
For the Appellant

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DON GLADDEN, ESQ.,
For the Appellee

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REBUTTAL ARGUMENT OF:

DAVID M. KENDALL, ESQ.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 73-1723, Hill against Stone.

Mr. Kendall, I think you may proceed whenever you are ready after this confusion disappears here.

ORAL ARGUMENT OF DAVID M. KENDALL, ESQ.

ON BEHALF OF APPELLANT

MR. KENDALL: Mr. Chief Justice and may it Please the Court:

This is a suit which was brought by the Appellees as a class action to challenge the provisions of the Constitution of Texas, the statutes of the State of Texas and ordinances of the City of Fort Worth which require essentially that to vote in an election to authorize the issuance of general obligation bonds, the voter must have rendered either personal or real property or both for taxation.

This, of course, is the legal obligation of all Texas citizens.

The three-judge District Court sitting in the Northern District of Texas found that various sections of our Constitution, of our statutes and of the ordinances or Charter of the City of Fort Worth were unconstitutional.

It said, "They are hereby declared unconstitutional insofar as they condition the right to vote in bond elections

on citizens rendering property for taxation."

Injunctive relief was granted and the Appellants were ordered to give effect to certain votes in an election -- the election which was in question here.

I would like to state our argument very briefly, if I may, and then elaborate on it as time permits.

I think the first point we would make is that the attack on our Constitution is based on the 14th Amendment Equal Protection Clause. A condition to the invoking of that clause is that there be some classification.

It is our position, and I think we can show that there is no classification involved here, that all residents of the State of Texas are qualified to vote in these elections.

The second point I would make is that if there is a classification, nevertheless, we are not talking here about whether or not the citizens of Tarrant County or Fort Worth may vote on a question, for instance, of whether or not they can build a library.

The vote in question was on whether or not Six Million, Eight Hundred and Sixty Thousand Dollars should be financed, the cost of the library -- should be financed by bonds payable from taxes on rendered real and personal property.

It is the policy of the State of Texas that only

those who obey the law which does require that everyone render his property and who do render their property and pay taxes on it, although the payment of taxes is not a prerequisite, should be entitled to vote.

The statutes declare that all property, real, personal, mixed, except that which is subject to -- I'm sorry -- except that which is exempt is subject to taxation and shall be rendered and listed between January 1st and April 30th each year until rendition is --

QUESTION: Mr. Kendall --

MR. KENDALL: Yes, sir.

QUESTION: Do you have to render property that is exempt?

MR. KENDALL: I believe you do because, for instance, as to personal property, the exemption is a dollar amount and I don't know how you would take the exemption unless you rendered it.

QUESTION: Well, what happens in practice? I gather from reading these briefs that in practice this law isn't very faithfully observed.

MR. KENDALL: To be very honest, I don't know. We do have in the record that in 1971, I believe, there was some \$4 billion in personal property rendered in the State of Texas that produced taxes of \$500 million or so. I -- these figures are -- it is on page 68 and 69 of the Appendix.

These figures are part of the stipulation so, apparently, someone is rendering personal property --

QUESTION: Well, does that -- do they render -- in fact, do people render just the securities they own? They don't render tables and chairs, do they, and television sets and washing machines?

MR. KENDALL: I just -- again, it varies from place to place. There is some indication in some areas -- cities -- automobiles are taxed and in others they are not. I know that everywhere I have lived in Texas I have always had to pay a tax on my automobile.

QUESTION: Well, on an automobile --

MR. KENDALL: I know that in my office in Dallas when I was in private practice the tax assessor used to come through the office and list every table and chair we owned.

QUESTION: Well, but you didn't render them. He listed them.

MR. KENDALL: Well, that is the alternative. If you don't render, he renders for you so it's -- they are rendered.

QUESTION: Umm hm, how about this voter qualification? If it is not a voluntary action on the part of the individual taxpayer and would-be voter, if it is rendered for him by a tax collector, does that make him eligible?

MR. KENDALL: I would think that would be

considered --

QUESTION: Well, it is not what you think.

MR. KENDALL: I'm sorry.

QUESTION: I was wondering what the rule is.

MR. KENDALL: I don't know. The courts have not spoken to that but that is considered that your property has been rendered.

QUESTION: If it is rendered for you.

MR. KENDALL: Yes, sir.

QUESTION: As well as rendered involuntarily.

MR. KENDALL: Yes, sir.

QUESTION: And in practice -- you don't know what the facts are -- what the actual facts of life are.

MR. KENDALL: The reason I don't know is that they vary from tax assessor and collector to tax assessor and collector. The law is very specific that everything must be --

QUESTION: Well, I know.

MR. KENDALL: Some render -- some go out and -- very precise, I believe, in listing a person's property. Others do not.

QUESTION: And is this the county? Is that the entity?

MR. KENDALL: Again, it can be the county. In this case it is the city. It can be the county. It can be

a school district. It can be any other kind of a special district.

QUESTION: Well, does this add up to -- you have tax rolls and the name "Brennan" is on it with some property listing next to it. He is eligible to vote because whoever put it there, his property has been rendered?

MR. KENDALL: That is correct. Whether or not you pay taxes on it.

QUESTION: Whether it is all my property or a thousandth part of it, it doesn't matter.

MR. KENDALL: It doesn't matter. The value doesn't matter.

QUESTION: Whether or not you ever actually paid taxes, does it?

MR. KENDALL: That is correct. That is the holding of our Supreme Court in the Montgomery case.

QUESTION: I suppose whether the return or the rendering of the report is true or false that that is also true. He might be -- the taxpayer might be liable under some other statute for rendering a false report.

MR. KENDALL: That is correct.

QUESTION: And the rendering gets him on the rolls.

MR. KENDALL: He is on the rolls.

QUESTION: Does he have to be otherwise registered?

MR. KENDALL: He would also have to be a registered

voter, yes.

QUESTION: But I gather when the assessor goes through your office, he doesn't look in your safe and find all the securities there and he just lists your tables and chairs, you are an ineligible voter.

MR. KENDALL: That is correct.

QUESTION: And I suppose your next point is that anybody could render property if he wanted to.

MR. KENDALL: That is correct.

QUESTION: If he wants to vote, he can vote. All he has to do is render some property and everybody has got some property to render.

MR. KENDALL: Exactly. If I may quote from the Supreme Court of Texas on this very point --

QUESTION: Well, what if one files a return showing no property? Is he then eligible to vote?

MR. KENDALL: I think he would have to render property for taxation.

QUESTION: Well, everybody --

QUESTION: Even though he possesses no advance.

MR. KENDALL: That's right. I'm sorry.

Our position is that everybody -- and the Supreme Court says this, of Texas, says that everybody has property. Everybody has something to render and, in their language --

QUESTION: At some time during the year, at least.

QUESTION: You had a case in Texas, didn't you, where five voters rendered \$100 each.

MR. KENDALL: Yes, sir.

QUESTION: And the court held that that --

MR. KENDALL: That was Handy against Holman and the court said, that's all right, if they want to render \$100 each so they can vote, they can do it, and we can't challenge it.

QUESTION: Did the counties determine the rate of tax or is this determined ---

MR. KENDALL: We have multiple taxing authorities. A county will determine the rate of taxation for county taxes or city taxes, school district taxes, junior college taxes, hospital district taxes and so on and each one will determine its own rate, within certain statutory or constitutional limits.

QUESTION: And these vary widely across the state?

MR. KENDALL: Yes, sir. The Supreme Court in the Montgomery case said -- and I am quoting, "It is the contention of the Attorney General and we agree that voter qualifications of ownership under the Texas constitutional and statutory provisions stated above, as interpreted by our decisions are so universal as to constitute no impediment to any elector who really desires to vote in a bond election."

A voter is qualified if he renders any kind of

property of any value and he need not have actually paid the tax.

QUESTION: That is your case here?

MR. KENDALL: No, I am sorry, the Montgomery case at 464 Southwestern 2nd at page 640.

QUESTION: Incidentally, when one goes to the polls, I gather -- of course, there is the registration --- but how does he prove that ---

MR. KENDALL: He signs an affidavit that he has rendered at least one piece of property for taxation and ---

QUESTION: He signs an affidavit.

MR. KENDALL: --- he describes that.

QUESTION: I see.

MR. KENDALL: Yes, sir. The statutes require that all property be rendered for state, county taxes, for taxes of political subdivision and so on and that those who have duly rendered taxation are qualified to vote.

These provisions are attacked by the Appellees as being unconstitutional, as invidiously discriminating against a class, namely, the class of all those who fail to render their property for taxation, even though our statutes require that they do render their property.

It is attacked by another group of Appellees who rendered their property but who now assert that because --- who assert that rendering taxpayers are given a veto, in

effect.

In Reynolds against Sims, this Court made it clear that the classifications of those entitled to vote based on race, sex, economic status or place of residence were invidiously discriminatory and would fall.

There is no justification constitutionally for those classifications but the classification, if there is one under our Texas Constitutional Statutes, is a classification of those who obey the law and render their personal property for taxation whether they pay or not.

Surely, that classification, having nothing to do with race or sex or economic status or place of residence --

QUESTION: Now, is that true, what you just said?

As I understand it, it is the Texas law that if one renders an incomplete return or a false return, he qualifies to vote in this kind of an election.

MR. KENDALL: Yes, sir, if he renders at all.

QUESTION: Well, then, he doesn't have to file a complete return, as you just indicated.

MR. KENDALL: Not for these purposes. Again, I am sure it varies from district to district. The law requires a complete return and if he fails to file one -- and if it is the policy of the district to enforce the law in that respect --

QUESTION: He may be prosecuted under some other statute.

MR. KENDALL: Under some other statute, yes.

QUESTION: But do you know, or does the record show how many people, in fact, file a de minimus return?

MR. KENDALL: No, sir. As a matter of fact, the record doesn't show that there is a single person who did not file a return. The record is absolutely silent on that. We don't know that there is a person who was eligible to vote in this election who did not file a return.

We know that there are people who voted as not having filed returns but we don't know that there is a single person who did not, nor do we know whether there is a single person who cannot file a return.

QUESTION: Well, I gather, Mr. Kendall, anyway, speaking now only of the election process --

MR. KENDALL: Right.

QUESTION: -- one goes into the voting booth and all he does is sign an affidavit that I have returned \$100 cash, furniture, that sort of thing, and the election board lets him vote. They don't look behind it.

MR. KENDALL: No, they do not.

QUESTION: I suppose unless it is challenged.

MR. KENDALL: If it were challenged, I assume they would look behind it but I know of no instance, there is none here that we know of.

QUESTION: And if it were not true, then he might

be subject to some penalty of perjury for making false statements to get into the polling place.

MR. KENDALL: Right.

QUESTION: But is money a renderable?

MR. KENDALL: Yes, sir, money in the bank is subject to rendition.

QUESTION: Cash in your pocket.

MR. KENDALL: I guess cash in your pocket would be, shoes on your feet.

QUESTION: If any.

MR. KENDALL: Watch on your arm.

QUESTION: What kind of exemptions do you have for this kind of thing?

MR. KENDALL: \$250 for household goods and furnishings.

QUESTION: What about --

MR. KENDALL: So your watch is not exempt, your clothing --

QUESTION: What about clothing?

MR. KENDALL: No.

QUESTION: No exemption at all?

MR. KENDALL: No exemption for clothing. Household goods and furnishings for \$250.

The truth of the matter -- well, in Reynolds against Sims, this Court said, so long as the divergence is from a

strict population standard or based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal population principle are constitutionally permissible.

The truth of the matter is that our statutes deny the right to vote in a bond election to no one, rich, poor, black, brown, white or for any other reason. Everyone owns some property subject to rendition and as I have pointed out, there is nothing in this record to show that there is anyone who cannot meet the qualification to vote, who cannot render.

There are many, many people who do not render their property for one reason or another personal to them but there is no evidence in this record that there is anyone in the City of Fort Worth who could not have rendered property and who could not have qualified to vote.

QUESTION: You indicated a little while ago that someone without any property at all could not render.

MR. KENDALL: If there is such a person in Fort Worth, he could not render. If he absolutely was stark naked --

QUESTION: Well, suppose he went in and said, all I own is a suit of clothes?

MR. KENDALL: Render it.

QUESTION: Render it.

QUESTION: That is rendering it.

Now, and I gather, as I understand what you said about the Supreme Court opinion, it is immaterial whether he pays taxes or not.

MR. KENDALL: That is correct.

QUESTION: He still may vote.

MR. KENDALL: Yes, sir.

QUESTION: Therefore, it is not like a poll tax case where you can't vote unless you pay the poll tax.

MR. KENDALL: That is correct.

QUESTION: Even though that is only a dollar or two. The tax on a suit of clothes might be 50 cents but even if you don't pay it, you can vote. Is that right?

MR. KENDALL: [Inaudible.]

QUESTION: Is there only one day in the year you can render?

MR. KENDALL: Oh, no, you can render -- by statute, you can render from January 1st to April 30th, by statute and I am sure -- I think you can even render after that.

QUESTION: You mean on any date within that period of time, or --?

MR. KENDALL: The current year's taxes are rendered between January 1st and April 30th.

QUESTION: Yes, but for what day? What is your assessment date?

MR. KENDALL: January 1st.

QUESTION: This, I think, is what Justice White is asking.

MR. KENDALL: Well, it is property owned as of January 1st is the determinative --

QUESTION: You could go by -- if you -- owned -- April 1st, if you could at least remember you had one meal that day, you could render it.

MR. KENDALL: Yes, sir.

QUESTION: Could you render saying, I have household goods and furnishings of a value of \$250 and claim my exemption? Is that a rendering?

MR. KENDALL: That is a rendering. Yes, sir. You would not pay any taxes on it.

QUESTION: But you could vote.

MR. KENDALL: I believe so. Yes, sir. You have rendered your personal property.

QUESTION: What about homestead property?

MR. KENDALL: That also is rendered. You have to render it to claim a homestead. You only claim the homestead when you render it.

QUESTION: But -- oh, you didn't -- you don't pay any tax at all?

MR. KENDALL: That is right.

QUESTION: Mr. Kendall, I suppose there are other

laws which impose an obligation on you independently of the right to vote, to render taxable property. Are there?

MR. KENDALL: Oh, yes, sir. There is a whole section in our statutes having to do with the rendition of personal property starting with Article 7150, I believe it is.

QUESTION: So if you have a \$500 bank account and do not render it, then you have violated Texas law.

MR. KENDALL: Yes, sir.

The statutes are very specific. Article 7162 has some -- lists some 42 different things which must be rendered and then concludes with Section 43, the value of all other property not enumerated above, so I don't know of anything that that doesn't catch and it is -- oh, the number of goats and the value thereof and so on. It is that specific.

QUESTION: Is there a form provided to taxpayers to fill out for rendering property?

MR. KENDALL: I'm sorry, but I don't know.

QUESTION: You have never filled one out yourself?

MR. KENDALL: I have -- no, I have not because I have not lived -- I have had personal property rendered by the Taxing Authority for me but I have never gone down and filled out a form --

QUESTION: Yes, right.

MR. KENDALL: -- where I rendered.

QUESTION: Well, do you know then whether the rendition or rendering by the authority is a true and correct rendition, if you haven't done it yourself?

MR. KENDALL: You mean, whether it is technically correct as to value or as to what property test --

QUESTION: Complete as to your holdings.

MR. KENDALL: I am sure it is not. I am sure it is not complete as to my holdings.

QUESTION: Well, then, how is the Texas system rational in any way?

MR. KENDALL: It is uniform -- whatever the practice is, it is uniform and equal within a particular taxing authority. The Supreme Court has said that anybody who wants to vote in one of these bond elections, if he wishes, may go down and render any amount of property for taxation. He does not need to pay a tax on it but he has to have some property rendered.

QUESTION: Suppose a statute need not be rational to be constitutional if it doesn't hurt anybody? Is that your case?

MR. KENDALL: I think that is partly true although I think there is a certain rationality in this, although it-- not as it applies to everyone but the theory behind this, I

am sure is that if you are going to build a \$6,860,000 library and pay for it by taxes levied against rendered property and that is the only way it is going to be paid for, it is not subject to payment out of other taxes and if you don't --

QUESTION: Mr. Kendall, is there anything in this record which indicates the difference this statute has made in voting on these bond issues?

MR. KENDALL: The only statistics in this record as to votes is on these two issues which were involved in the election in question.

QUESTION: And by reason of this requirement, how many people were -- votes were not counted?

MR. KENDALL: Well, all votes are counted. They are given different effects.

QUESTION: I see.

MR. KENDALL: Those who have rendered are counted and the bond issue carries only if they -- a majority of them and a majority of all --

QUESTION: Yes, I recall.

MR. KENDALL: Now, this is -- there is no statute that provides this method of voting. This is something which the Attorney General's predecessor devised as a means to assure that we could continue to have bond elections.

QUESTION: So as to get majorities of votes.

MR. KENDALL: Right.

QUESTION: And when you did, then you were safe.

MR. KENDALL: That's right and in this instance

the --

QUESTION: You did not get over the --

MR. KENDALL: -- library issue failed.

QUESTION: Yes.

MR. KENDALL: It got a majority of those who did not render, but it did not get a majority of those who did render and the issue submitted to those who rendered was, or to all of them was --

QUESTION: Well, as between those who rendered and those who didn't render, what were the proportions?

MR. KENDALL: The exact vote on the library issue of those who rendered 10,000 or 11,000 voted for and 12,000 voted against.

QUESTION: So that is of those who rendered?

MR. KENDALL: Those who rendered, 11 to 12.

QUESTION: That's about 21,000.

MR. KENDALL: Right.

QUESTION: And the amount --

MR. KENDALL: And the non-renderers, it was 3,700 for and 1,100 against.

QUESTION: That is what, 6,000 -- no, 4,500 about.

MR. KENDALL: 4,800 and it is about three to one --

QUESTION: 21,000 who rendered and 5,000 who didn't.

MR. KENDALL: Right.

QUESTION: Those who didn't render violated the law, didn't they?

MR. KENDALL: They violated the law.

QUESTION: Well, what do you do to them?

MR. KENDALL: I'm sorry, in what --

QUESTION: By not rendering their property.

MR. KENDALL: By not rendering. That, again, is up to the local taxing authorities as to what they will do, if anything and --

QUESTION: Well, what does the statute say as to sanctions for not rendering?

MR. KENDALL: I have not found any.

QUESTION: No.

QUESTION: You hope there aren't.

[Laughter.]

MR. KENDALL: Probably.

QUESTION: Well, why do some -- I mean, I realize it is necessarily speculative, some of these -- but why do a lot of people render and some people not render? Is it just a question of whether you want to pay taxes or not?

MR. KENDALL: Well, of course, one reason for rendering would be if you like to vote in this type of

election. That is one reason.

Another is that I think you are probably under some more of an obligation to render absolutely everything if you do it yourself because you have to render under oath and state that that is all the property you have. Whereas, if you leave it up to the --

QUESTION: Or is it simply has the assessor has got around?

MR. KENDALL: Well, the assessor, for instance, goes to the automobile license rolls and he -- in every county I have lived in and I get a tax bill for my automobile, a property tax bill on my cars where he has rendered them for me but he doesn't -- except in my business -- he doesn't come in my home and --

QUESTION: As I reflect for a moment on this, in the two states I have lived in as a legal resident, Minnesota and now Virginia, that is precisely what a great number of people do. They just don't bother to make a report. They permitted the assessor to levy for household goods a fixed percentage of the value of their home as the alternative and then the automobile was taken off of the automobile list. So I guess --

MR. KENDALL: Yes, I think most people I know don't render their homes. They are surely taxed but the only time you do anything about it is if you feel that they

have been unjustly evaluated and then you go down to the Board of Equalization and complain about it but otherwise you just, you get a notice that they have rendered it at a certain figure and you accept it.

The cases upon which the Appellees rely I think are easily distinguishable. First was Kramer, the Kramer case and that case involved an election of a board, a school board and the decision was, essentially, to enforce the one-man, one-vote rule in the absence of some compelling state interest to deny the franchise to all bona fide residents.

Then Chief Justice Warren declined to express an opinion as to whether the state in some circumstances might limit the exercise of the franchise to those primarily interested or primarily affected because there he found everybody was equally interested and affected.

In a dissent written by Justice Stewart, it was said that they were unable to see any distinction between the permissible limitations and those imposed in the Kramer case and Mr. Justice Stewart went on to say, and I am quoting, "So long as the classification is rationally related to a permissible legislative end, therefore, as are residence, literacy and age requirements proposed with respect to voting, there is no general denial of equal protection.

The Cipriano case --

MR. CHIEF JUSTICE BURGER: Well, if you are dealing

with our cases, Counsel, maybe --

MR. KENDALL: Right.

MR. CHIEF JUSTICE BURGER: -- it would be a good time to hear from your friend and see whether you have any comments after he gets through, if you have covered your major points.

MR. KENDALL: I think I have, if the Court please.

I would like to make one other point and that is that this election is not a vote on whether or not to build the library. It is a vote on whether this is how it would be financed.

The City Council determines whether the library is built. The City Council may build it with funds from the Federal Government, from some foundation or from some other sources.

The question here is whether these people who render property may be those who are entitled to vote on whether that is the financing to be used for the library.

MR. CHIEF JUSTICE BURGER: Mr. Gladden.

ORAL ARGUMENT OF DON GLADDEN, ESQ.,

ON BEHALF OF RESPONDENTS

MR. GLADDEN: Mr. Chief Justice and may it please the Court:

If I may go right into Mr. Justice Stewart's question relative to the practical application of the Texas

law as it applies to personal property or the taxing structure.

What the situation is, all real estate is easily identifiable and assessed by the county tax assessor and the governmental entities that assess and levy taxes.

Personal property in Texas -- and, incidentally, I cite in our brief 51 Texas Law Review 885, "The Property Tax in Texas Under State and Federal Law" by Professor Yudov fairly well outlines our facts as those being the same facts in the Stewart case arising in the State of Louisiana and that is that you have an all-encompassing reference to all property within the state being taxable and then as a practical matter the collection is restricted to real estate and business property which is easily discernible.

Counsel's reference to his law library being taxed in Dallas is one of those business assessments that is made after the time for personal rendition takes place.

From a practical standpoint, about the only taxes that are levied in Texas are taxes on real estate, taxes on business personalty and in about 400 taxing districts, taxes on automobiles. Most --

QUESTION: How about intangible personal property? I'm talking about securities.

MR. GLADDEN: None. There are, from a practical standpoint, no intangible personal property is either voluntarily rendered nor is there any facility available for

the tax assessor to go out and locate and identify. He does not go to the banks and assess bank accounts unless it is a business-oriented or a business-committed --

QUESTION: Do you have a state income tax?

MR. GLADDEN: No, sir, we do not.

QUESTION: Well, how do you raise all this money that you are --

MR. GLADDEN: By ad valorem taxes on real property and business personalty is where the money comes from.

QUESTION: And that is it.

MR. GLADDEN: Well, we have a sales tax.

QUESTION: Yes, a sales tax, but no state income tax.

MR. GLADDEN: We have no state income tax. We have a city sales tax as well as a state sales tax.

QUESTION: What happens if I go and, say, use your words in Texas that I want to render \$100 worth of personal property?

MR. GLADDEN: Well, it's kind of hard to do. Mr. Kendall kind of pointed up that it just isn't done, Mr. Justice Marshall.

QUESTION: You'd hardly --

QUESTION: Well, I am saying when you go to vote.

MR. GLADDEN: You must have already previously rendered it.

QUESTION: Well, I can send a letter to the rendering agency and say I hereby render.

MR. GLADDEN: All right, that is -- if you do that, and you are willing to sign an affidavit to the effect that you have rendered taxable property.

Now, I disagree with Mr. Kendall. Article 3(A) does not say rendition of non-taxable property qualifies you to vote.

QUESTION: Well, I thought you said all intangible property was taxable.

MR. GLADDEN: Except for this \$250 exemption, perhaps.

QUESTION: Yes.

MR. GLADDEN: But what Section 3(A) says -- and this is the section that we are complaining of -- it provides that a person who is already qualified must also be a person who has rendered property -- excuse me -- tax -- well, first of all, the city ordinance says that it must be tax-paying voters. The --

QUESTION: The ordinance is different from the --

MR. GLADDEN: Yes, yes, the city ordinance --

QUESTION: -- state provision.

MR. GLADDEN: The city ordinance makes reference to tax payers.

QUESTION: Yes.

MR. GLADDEN: Persons who are tax payers. The state statute says, provided that a majority of the qualified property tax-paying voters of the district, and in an election to be held for that purpose, whose shall vote such tax.

QUESTION: Mr. Gladden, are you suggesting disagreement now with Mr. Kendall?

When I asked him earlier, suppose one simply went in and signed an affidavit and said I rendered a suit of clothes, that is all I own, and he said that if one did that at the polling place he would be permitted to vote.

MR. GLADDEN: No, sir. Oh, if you say that you did do that, yes.

QUESTION: Yes. Would you then be able and permitted to vote?

MR. GLADDEN: Yes. And, of course, if you had committed a fraud and had not rendered that suit of clothes for tax purposes, then --

QUESTION: But you did.

MR. GLADDEN: But if you had, yes.

QUESTION: If you had. Then you would be permitted to vote.

MR. GLADDEN: I am satisfied that is true, yes.

QUESTION: So one doesn't have to pay the tax on the suit of clothes, 50 cents, 25 cents, whatever it might be.

MR. GLADDEN: Presumably.

QUESTION: Well, in that sense, as I read Judge Thornberry's opinion, one of the grounds on which he found this unconstitutional was that it is like the Poll Tax case or Harper case but you had to pay the poll tax before you could vote, but here, as I understand it, if I correctly understand you, you don't have to pay the tax on the suit of clothes. As long as you have rendered the suit of clothes, then you may vote. Is that right?

MR. GLADDEN: Well, this is correct because, as I say, again, the Stewart situation, which this Court summarily affirmed, applies that from a practical standpoint, there is no rendition of personalty.

The tax assessor, after April 1st, has the authority to and does go to business people and does determine how much of Mr. Kendall's library or his value of his law library. He does not go out to his house and inventory his personalty.

QUESTION: Well, where were the 23,000 rendering taxpayers? Were they all owners of businesses?

MR. GLADDEN: They were all owners of real estate, your Honor, in most instances -- in most instances.

QUESTION: Or automobiles?

MR. GLADDEN: Not in Fort Worth. The City of Fort Worth does not even undertake to assess private, personal automobiles, business automobiles only.

QUESTION: Is there any way of telling from this record what the nature of the property rendered was on behalf of the 23,000 who said they had rendered?

MR. GLADDEN: No, there is no. There are some references into it as to the amount of dollar revenues that come from personalty versus realty but there is no reference as to whether that came from business interests which -- of course, corporate interests, they have no right to vote in this type of situation and, of course, corporate interests are the --

QUESTION: So the record doesn't shed any light on the type of property rendered by these 23,000.

MR. GLADDEN: No. But let me, if I may, back up and kind of outline the facts situation as to this election and as to the procedures that have been followed to shed maybe, the circumstances where we are confused.

First of all, prior to the three-judge court decision in Phoenix, in Texas only persons who had rendered property and in that instance, for all practical purposes, only persons whose property had been rendered by the tax assessor, that being real estate, were privileged to exercise the ballot.

Following Cipriano and the three-judge court in Phoenix, the Attorney General's office established this dual election process whereby he in turn said, in order to preserve

the validity of bonds pending this Court's determination of the Constitution as it applies to Texas, we will set up a dual election process and that is, those people who come in to we will, for the first time, let, in essence, non-real property owners come into the ballot box.

But we will segregate their ballots and have them cast in one box and those who are willing to affirm rendition of taxable property in another box and then we will have a record as to what the facts are when and if the federal courts decide that our state law is unconstitutional.

This has been the procedure that has been followed in Texas since 1969, since the District Court decision in Phoenix and this Court's decision in Cipriano and Kramer.

QUESTION: Well, you say the breakdown is between real property taxpayers on the one hand and those who have affirmed the rendition of personal property on the other?

MR. GLADDEN: No. The rendition -- what happens is, if a person comes into the ballot box or into the polling place, he is afforded, since Phoenix and since the District Court decision in Phoenix, ince '69 -- he is afforded an opportunity to sign one of two pieces of paper.

One piece of paper said, "I own and have rendered property subject to taxation in the City of Forth Worth and I therefore am entitled to vote over in this box." All right, then the election judge --

QUESTION: And they don't have to say what the property was, just "I own and have rendered."

MR. GLADDEN: That is correct.

QUESTION: And as a matter of practical fact you are telling us that anybody who was in that box would be a person who owned real estate --

MR. GLADDEN: Or business.

QUESTION: Or a proprietor of a business that owned property.

MR. GLADDEN: Which had been assessed by the tax assessors.

QUESTION: Right.

MR. GLADDEN: Which the tax assessor initiated the placing of him on the rolls.

QUESTION: As a matter of practical fact, then --

MR. GLADDEN: That's correct, right.

QUESTION: -- it would be those people only would fall into that category.

MR. GLADDEN: But what is in the other box?

QUESTION: Okay, in the other box, they come in and, as I say, from '69 forward. Up until 1969 they were not even privileged to come on the premises --

QUESTION: No, no, but I mean --

MR. GLADDEN: But from '69 forward, they sign a statement to the effect, "I have not rendered any property

within the taxing district," and they say, "Okay, you go vote over in that box."

QUESTION: Yes.

MR. GLADDEN: So then we have the sanctity of the real property or, for practical standpoints, the real property owners preserved in that instance and then we also have to tabulate for no purpose, actually, I think under Montgomery, the remaining straw poll of those persons who have neither rendered their property nor had the tax assessor come by their business and render it for them.

QUESTION: And although you say that as -- you have said as a matter of practice it tends to be real property or business personality that is rendered, so far as the record has shown, on these 23,000 voters here who rendered, the record does not show what type of property they rendered.

MR. GLADDEN: This is quite correct.

QUESTION: It could have been somebody who was interested enough to write a letter and say, "I hereby render \$100 worth of property and P.S., this is because I want to vote," and then he goes in and he will be perfectly qualified to vote.

MR. GLADDEN: He very well could have; if he renders it and, of course, then he is on the tax rolls and the tax assessor sends him a bill the next year for his proportionate share, assuming that he has taxable property.

MR. GLADDEN: And so then we add additional confusion. The Attorney General's position was -- was, I am not going to certify and it is his statutory responsibility of certifying the validity of the bonds and they are not saleable otherwise -- the Attorney General's position was that but then, Montgomery, which was a mandamus suit brought by a school district against the Attorney General seeking to require him to certify where there had been a split, where the aggregate carried but it did not carry in the property owner box and the Texas Supreme Court said, in essence, as I read it, that neither the Attorney General nor the Phoenix case applies and that Article 3 of Section 6 of the Texas Constitution just says, real property owners, period. Or, not real property --

QUESTION: Not real property.

MR. GLADDEN: It says, persons who have rendered property for taxation.

QUESTION: Right.

MR. GLADDEN: And so I think that Montgomery backed away from the position of the Attorney General in this make-shift kind of a we'll do it both ways, we'll look at the aggregate and give the aggregate veto power but not approval power.

QUESTION: But the Attorney General nonetheless went on to continue with his system.

QUESTION: Wouldn't he first have to write a letter and say, "What do you mean by rendering?"

MR. GLADDEN: Yes and, of course, this is the question that we have been facing and we only had 4,500 people vote in this election because it was a first-time experience and when you went in, even the election judges couldn't tell you what rendition meant and we found ourselves in a situation where people -- in the newspaper, two-column, I think, there is an exhibit where there is a two-column story on the front page of the newspaper explaining why, for the first time, people who don't own real estate are privileged to come and express their opinions though they will not be considered by the Attorney General of Texas for the purpose of determining the validity or the issuance of bonds.

QUESTION: Well, I thought the Attorney General, after he went into this two-box system under what he understood to be the compulsion of the Phoenix case --

MR. GLADDEN: Yes.

QUESTION: -- and Kramer, that he then didn't certify that the bonds were valid unless there was a majority of both the rendering people and a majority of the total.

MR. GLADDEN: This is correct. Then Montgomery was decided.

QUESTION: Yes.

MR. GLADDEN: Yes, in order to --

QUESTION: In order to play it safe.

MR. GLADDEN: In contemplation of the Court's ruling in this case, I think.

If this Court does not --

QUESTION: Right.

MR. GLADDEN: -- uphold the lower court, the dual balloting system will be dispensed with and we will go back to the initial Section 3(A) of those persons who owned properties which have been rendered for tax purposes.

QUESTION: There is one other little fish hook in this case and that is that the Fort Worth ordinance seems to require something additional.

MR. GLADDEN: It certainly does. It requires that you --

QUESTION: Pay taxes.

MR. GLADDEN: -- pay taxes and I think that Section 3(A) contemplates the payment of taxes. The purpose --

QUESTION: It doesn't say so.

MR. GLADDEN: No.

The purpose -- and if you will read Montgomery and if you will read the whole line in Counsel's brief, the purpose of this taxing of this provision is to collect taxes, not sufferage and of course, under the Poll Tax case, the lines drawn, the requirements of this Court in limiting

suffrage -- once that you afford everybody the opportunity to vote, you say people are qualified to vote in elections and then you say, in bond elections you narrow it to a special group of people. Then it has to be tailored to fit the purpose of and I hardly need to suggest that Section 3 of the Constitution certainly has not been tailored to collect very many taxes.

QUESTION: I don't quite understand, if your Supreme Court has said, rendition entitles you to vote, notwithstanding you don't pay the tax, how can your city have an ordinance which requires you to pay the tax as a condition of voting?

MR. GLADDEN: It is there. It is in conflict --

QUESTION: Well, can the ordinance stand up against that interpretation?

MR. GLADDEN: At this point we are attacking the ordinance. For the first time it has been attacked --

QUESTION: Well, what is at issue in this case, the ordinance?

MR. GLADDEN: The issue in this case is suffrage, whether --

QUESTION: Is the ordinance? Is the ordinance or the state statute?

MR. GLADDEN: Both the state statute, the state constitutional provisions and the ordinance.

QUESTION: Well, they are different.

MR. GLADDEN: And they are all different.

QUESTION: Which is which?

MR. GLADDEN: I beg your pardon?

QUESTION: Which is which? If it were only the ordinance, I don't suppose the three-judge court would have any jurisdiction.

MR. GLADDEN: Well, of course, we attacked the Attorney General's certification or refusal to certify and that gave it statewide application because we are attacking the state constitutional provisions which was set out in the Phoenix case and referred to in the Phoenix case.

QUESTION: Because the three-judge court puts them both in the same boat. In his description at the outset he talks about the -- in one breath about the laws of the state and of the city charter.

MR. GLADDEN: Now, this is not true. This -- the city charter requires the payment of taxes. The --

QUESTION: Well, he talks about them both the same, the same way.

MR. GLADDEN: Well, they are fiddrent and in the City's brief which, incidentally, the City filed a brief as an Appellee but in support of Appellant's contention.

There are some briefs by some other taxing districts or some other districts including the El Paso Junior College

District, which was statutorily created by majority vote and given the power to assess taxes by a majority but restricted in bond elections to issue bonds for capital improvements to go back and obtain not just a general majority-qualified voter but go to the property -- those persons who had rendered property for tax purposes to issue those bonds. They are in support of our position.

QUESTION: Mr. Gladden.

MR. GLADDEN: Yes, your Honor.

QUESTION: In the election that you have been talking about, was the Fort Worth ordinance applied?

As I understood what you said earlier, a voter who entered the booth or the polling place was given the opportunity of going in one of two voting booths. In one, he would sign a certificate of some sort saying he had rendered property.

Was he also required, in Fort Worth, to say that he not only rendered it but paid taxes?

MR. GLADDEN: I am not sure what the language -- I think the language probably was drawn in the -- and a copy of that is in exhibit -- I think it was probably drawn on the state affidavit concept and that is, I own taxable property which has been rendered for tax purposes.

I disagree with Mr. Kendall that non-taxable items, household goods, a rendition of household goods only --

QUESTION: So --

MR. GLADDEN: -- would not constitute rendition of taxable property.

QUESTION: So it may be that --

MR. GLADDEN: If it is understood.

QUESTION: Excuse me, Mr. Chief Justice --

MR. GLADDEN: Right, excuse me.

QUESTION: I was simply going to ask whether, if the ordinance was not applied in this case, we have that ordinance or its validity before us.

MR. GLADDEN: I am not sure that you do have, your Honor.

QUESTION: Another question I wanted to ask about the certificates that one signs, is that -- does that signature enjoy the secrecy of the ballot box? Or is your name signed to it and your name then made available to the taxing authorities?

MR. GLADDEN: Now, it is not a secret. It is an available thing that is on file along with all the other election returns. The list of those persons who voted in this box and that box together with the supporting signature on the thing that comes in is available to the taxing authorities.

QUESTION: It is a separate piece of paper from the ballot.

MR. GLADDEN: Yes. It is a roll that you come in and as I say, they separate you as you come in depending upon which one of these particular declarations that you sign.

QUESTION: Oh, you sign your name on a book, perhaps.

MR. GLADDEN: Yes, on a sheet of paper which is numbered in terms of a registration that I appeared here today and I voted.

The particular instance, though, is that there is no evidence of the utility of this by any taxing authority to go out and render or to find out whether that person really does have, or to collect any taxes from that person and so for -- my position is, in terms of the constitutional application, there are other means by which to collect taxes.

There are far better means than that which is not exercised, though it is on the books.

QUESTION: I was going to say, you can really -- it makes a big difference to me whether or not that ordinance was applied to those who are permitted to vote as having rendered.

MR. GLADDEN: Your Honor, I think I can, in just a moment's time, locate the language.

QUESTION: Okay.

MR. GLADDEN: The ordinance was not applied. The language on the certificate was couched in the terms of the state constitutional provisions which said, "I own taxable property in the district and it has been duly rendered for tax purposes."

QUESTION: So the ordinance really wasn't --

MR. GLADDEN: Did not impair the participation, that is correct.

QUESTION: So when you say here, attacking the ordinance, did you mean by that, attacking it before this Court?

MR. GLADDEN: Yes, we raised the -- we filed the suit in the lower courts --

QUESTION: Well, those don't apply.

QUESTION: Well, only to the extent that it goes as far as the state law.

MR. GLADDEN: That is right. The ordinance provided that no bond shall be issued unless authority shall first be submitted to the qualified voters who pay taxes but it was treated from a standpoint, again from the news media coverage of this and from all other purposes, as being, equating the same as rendition, either involuntary --

QUESTION: If he were liable to pay taxes.

MR. GLADDEN: Yes, yes. And --

QUESTION: When was this rather unique provision

adopted in Texas?

MR. GLADDEN: The Texas Constitution, I think -- this was adopted in 1879 and then amended in 1932, I believe. It is my under--

QUESTION: Was it carried over from the days when it was an independent republic?

MR. GLADDEN: No, I am not sure whether or not it was in the provisions prior to -- independent republic, we went out in 1845 and became a state that year and 1879 was the last constitution that we adopted. This was deliberated on, as I recall or as I -- as the historic background was, it was deliberated on by that Constitution Convention and it was resolved that property owners were the ones that ought to be imposed long-term obligations on, on the ad valorem tax base and that has carried forward -- was carried forward up until the Phoenix decision was rendered and then it -- as I say, this modified approach has been taken since the District Court in the Phoenix case.

We feel like that this Court, in the Phoenix case outlined -- looked at the Texas Constitution and footnoted the 14 states that had no unique problems in levying and collecting taxes and in turn, found that Phoenix could get by with -- or the City of Phoenix could get by in its taxing procedures without imposing suffrage or imposing an additional requirement on a person's right to vote.

That was not tailored to satisfy an imperative need of the state and I think that is our situation in this case. We have a circumstance where, if there is no classification, then there is no need to impose an additional requirement on a voter that he have made some kind of a declaration to somebody at some time prior to the time he enters that booth that has not been acted upon, that has never been used as a basis upon which to levy and collect taxes, to add that additional requirement and no evidence, Mr. Kendall --

QUESTION: However little inconvenience is involved.

MR. GLADDEN: However little inconvenience.

QUESTION: It is too much constitutionally in the way of a burden.

MR. GLADDEN: I think the right of suffrage, Mr. Justice, is one that -- that we need to encourage rather than discourage.

QUESTION: Well, it is about -- almost as burdensome as requiring them to register.

MR. GLADDEN: It is -- well, it -- no, registration you can go door-to-door to. Assessing your personal property I think you have got to go down to the county courthouse and find somebody there who has to go ask somebody where you find --

QUESTION: All you have to do is write a letter.

You just write a letter.

MR. GLADDEN: No, no, I think you have got to render it under oath, according to the statutes. You must --

QUESTION: But even so, even if it is only writing a letter, you still suggest that where something is filed, even that is too much.

MR. GLADDEN: Yes, yes. I think that before you can limit franchise or create a subclass of qualified voters that are going to pass on something such as library bonds or such as financing capital assets of a junior college district, you have got to have some rational basis for restricting that vote to persons who have rendered property for taxation and Texas has just wholly failed -- Arizona wholly failed and it is an interesting thing that our sister state of Oklahoma in 1969, twice, ruled on that question and found that that kind of a requirement was constitutional and then in 1971, following this Court's decision in Phoenix, reversed itself and granted an injunction against the application of such a city ordinance and said, we are going to follow what the Supreme Court said in Phoenix and right about the same time that the Supreme Court of Oklahoma was doing that, the Supreme Court of Texas was saying, without talking about restricting voting, without talking about tailoring the restriction to fit the

particular function or need that the state had but just summarily said, we don't think there is anything wrong with making people pay their fair share of the taxes and the tax assessor must exhaust every means of ferreting out and locating Mr. Kendall's personal property that he has failed to render but has had a portion of it rendered by the tax assessor and thus qualify him to vote.

I suggest that, while there may be, it may not be the wealth qualification that was raised in the Poll Tax, it still is an additional requirement that there is no rational basis for.

It does not assist in the collection of taxes because there has never been any effort on the part of and there is no evidence in the record that the tax assessor has made him --- these records available to him to render those things declared.

QUESTION: Well, would you expect that to be in the record of a district court proceedings when you are talking about the rational basis for a legislative requirement? And there is a presumption, isn't there, that the legislature may have had a reason for doing something and I wouldn't think it is incumbent on the state to produce evidence before the three-judge district court that they, in fact, used this mechanism.

MR. GLADDEN: I think it is in Phoenix. I think

Phoenix placed a burden that when you restrict the franchise from the general franchise classification to a special franchise within that classification, that it is incumbent upon the state to show that there was some imperative necessity to do that in support of a compelling state interest.

QUESTION: And did you prove it by live witnesses and testimony at the District Court hearing?

MR. GLADDEN: There were no live witnesses. We stipulated all the evidence and there was suggestion -- there was some testimony by the city tax assessor that it is important that we have taxes to run our city.

QUESTION: Well, my suggestion is that your -- the rational basis for a legislative enactment isn't something you ordinarily produce by question and answer testimony in a hearing before the three-judge District Court. That is frequently something that is simply argued on the basis of whether it is arbitrary and so forth.

So your suggestion that the record doesn't contain anything I would find by no means conclusive.

MR. GLADDEN: Well, I think this. I think that the Court -- the Court in Kramer found that before there is a subclassification, a special classification of voters and, again, that classification -- or, there has to be some basis--

QUESTION: Compelling state interest.

MR. GLADDEN: Compelling state interest and --

QUESTION: And, of course, that, you can't prove ever.

MR. GLADDEN: This is a difficult thing to prove and I appreciate Mr. Justice Stewart's awareness of the difficulty in proving it. But that is the law and it was reaffirmed in Salier wherein this Court said, Phoenix is the law and Kramer is the law and before you can restrict a person's voting privilege and deny one person the right to vote, if he is in the general category of --

QUESTION: In Salier, we stated the holdings of the Phoenix and Cipriano cases.

MR. GLADDEN: Yes, this is correct.

QUESTION: I don't regard that as a reaffirmance of them.

MR. GLADDEN: Well, I am sorry. I so construed it as being, in essence, a finding that that was still the law and --

QUESTION: Mr. Gladden, up to this point, until just now, you haven't mentioned either Salier or Toltec.

MR. GLADDEN: Okay. I don't think they have any application at all because people who want to go to use the library are not as identifiable in terms of benefit and burden as there was in each of those cases.

I think that that is a clear distinction. I think

that -- and, again, Stewart, the three-judge court in Stewart said that just the fact that you pay the taxes does not create a compelling state interest so as to restrict a person to -- or restrict suffrage to determine whether or not we have a library or a viable junior college district with some buildings.

QUESTION: But your friend told us that this vote had nothing whatever to do with whether there was going to be a library but only as to what mode of financing was to be used.

MR. GLADDEN: The answer to it is that unless there are 6.8 million -- now, we don't have a library. We had two issues -- and this is in the record -- we had two issues submitted. We had an issue on whether or not we bought a public transportation system. That carried in the property owner box, in the nonproperty owner box and in the aggregate. We bought the bus system and we have got buses running.

We had another issue submitted the same day on the question of whether or not we authorized -- not compelled but authorized the City Council of Fort Worth to issue bonds for the purpose of constructing a library, \$6.8 million.

That carried in the property owner box. That carried in the aggregate. But it failed in the -- no, excuse me. It carried in the non-property owner box. It

carried in the aggregate but it failed in the property owner box.

QUESTION: Right.

MR. GLADDEN: The Attorney General of the State of Texas says, I will not certify those bonds and absent that, we don't have the money to build us a library.

QUESTION: Well, isn't that vote, on the basis of what you both have said, simply a sort of a local Gallup Poll on whether there should be a library?

The City Council has the final decision, he said, your friend said.

MR. GLADDEN: The City Council does not because at this moment they can't issue those bonds unless it carried in those who have rendered property for tax purposes. So --

QUESTION: They could build it out of general revenues if they had them, I take it.

MR. GLADDEN: If they had general revenue they could do so but from in terms of creating a lien against the ad valorem tax structure, they cannot do so absent approval of property owners.

QUESTION: What are the sources of revenue in Fort Worth other than real estate and personal property taxes?

MR. GLADDEN: The city -- okay, primarily the city has real estate, personal property taxes and a city sales tax

of one percent of the gross sales within -- one percent of the gross sales within the city.

QUESTION: Is that in addition to the state sales tax?

MR. GLADDEN: Yes, it is in addition to and has to have a referendum vote in that particular metropolitan area where they make the assessment. The City of Fort Worth does have a city sales tax.

QUESTION: Do you have any licensing taxes?

MR. GLADDEN: Oh, yes, we do have some -- no, licensing taxes were stricken. There used to be a state licensing tax that the city piggy-backed on but it was repealed and so the licensing tax failed.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Do you have anything further?

REBUTTAL ARGUMENT OF DAVID M. KENDALL, ESQ.

MR. KENDALL: If I may just take a minute or two.

I think there is one other source, Mr. Justice Powell. There is revenue-sharing which has furnished funds for a great many improvements in the State of Texas but I don't think that necessarily governs.

I think, really -- I started out stating our position in this and Mr. Gladden hasn't answered it yet and I don't think he can because of the decision in the

Montgomery case, and that is, that there is no class -- there is no class being discriminated against. Everybody in Texas qualifies to be a -- to render property for taxation.

They may or they may not choose to do so. I take issue with what Mr. Gladden said about nobody in Tarrant County renders. I don't know where he gets that.

That is not, certainly, in the record.

In the Handley case, as the Chief Justice pointed out, the facts were that 40 taxpayers rendered \$100 so that they could vote in an election, so that is a possibility.

But there is nothing in this record --

QUESTION: In Fort Worth --

MR. KENDALL: What?

QUESTION: In Fort Worth, how could a man render his personal property?

MR. KENDALL: Go down to the tax assessor and collector's office and --

QUESTION: Well, what would he be taxed for? Does Fort Worth have a tax on personal property?

MR. KENDALL: Yes, sir, very definitely. The statistics in the record show that of their property tax is some -- they have a total of about a million four hundred thousand dollars on the ad valorem tax rolls, so that 352,000 -- I'm sorry, 352 million is personal property that is subject to taxation in Tarrant County at Fort Worth.

QUESTION: What is that personal property? Homes?

MR. KENDALL: No, homes don't come as ad valorem. They are real property but I don't know what it is comprised of. It's -- it can be anything but real property and the record is silent.

QUESTION: It could be automobiles and boats, couldn't it?

MR. KENDALL: Automobiles or boats. It could be fur coats. It could be bank deposits, securities.

QUESTION: Well, don't we have to know what?

QUESTION: Cadillacs.

MR. KENDALL: Cadillacs, yes, sir.

QUESTION: Well, he says you don't tax cars in Fort Worth. Now, do you or don't you?

MR. KENDALL: Well, I don't know where that comes from because certainly not from the record in this case.

QUESTION: Well, we don't have much of anything on this record, do we?

MR. KENDALL: Not as to whether or not --

QUESTION: Because I don't know what rendering is yet.

MR. KENDALL: There is nothing in this record as to whether or not there are people in Fort Worth --

QUESTION: You know, you render gristle and fat. I don't know.

QUESTION: In order to make lard.

QUESTION: You make lard out of rendering. Is that what you do to taxes?

MR. KENDALL: Sometimes I suspect that maybe they do something like that but they -- as I understand the rendition as they speak of it here, it is either going to the assessor and collector's office or having him come to your home or your office or wherever and you submit a list of your property for taxation, or if you don't submit one, he submits one for you.

Now, Mr. Gladden mentioned -- I don't know what its importance is, that this was the only library that Fort Worth had and the record again is silent but in the brief submitted by the city attorney for the City of Fort Worth, it said, the "Library district being for the sole purpose of constructing a new central library in addition to the present seven branch libraries and the existing central downtown library."

So the question here was whether this is the way we are going to finance them and the city council, even if this bond issue passed, if the voters had to vote it overwhelmingly in favor of a bond issue to build a library, there is no -- there is nothing to compel the City Council to go forward with that.

As a matter of fact, because of rising prices, we

find very often we'll pass a bond issue to build a new public building and then when we get around to build it, we find that the bond issue wasn't enough.

QUESTION: It was just an authorizing vote.

MR. KENDALL: It was an authorizing --

QUESTION: You find that in any municipality.

MR. KENDALL: They may find they can't sell the bonds. There are lots of things that can come between this election and the building of the building.

I want to point out, if I may that Montgomery involved another section of the Constitution also which specifically referred to taxpaying voters and nevertheless, they said they did not have to pay taxes to qualify as voters.

Thank you very much.

MR. CHIEF JUSTICE BURGER: The case is submitted.

Thank you, gentlemen.

[Whereupon, at 3:16 o'clock p.m., the case was submitted.]