by an order which might be thought of as granting guardianship but not terminating parental rights.

Therefore, the question presented is answered in the affirmative.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: EUGENE T. URBANIAK
Deputy Attorney General

JULY 1, 1959

HONORABLE ALFRED N. BEADLESTON
12 Broad Street
Red Bank, New Jersey

FORMAL OPINION 1959—No. 13

DEAR ASSEMBLYMAN:

You have requested my opinion as to the constitutionality of proposed legislation which would revise the statutory system for the taxation of property owned by railroads.

The plan envisions that the Railroad Tax Law of 1948 be amended to afford railroads tax relief, while saving municipalities harmless from any loss of revenues. The distinctions between Class I and II railroad property would be eliminated. All real property owned by railroads would be subject to taxation to the State and for the use of the State. A single tax rate would be fixed by statute or by a State official such as the Director of the Division of Taxation acting pursuant to legislative delegation. The assessment of former Class I and II railroad property would continue to be in accordance with true value or other uniform standard. Companion legislation would direct that out of the general treasury, as provided in a general appropriation act or otherwise, moneys would be paid to the municipalities in lieu of the Class II railroad property taxes presently received under the Railroad Tax Act of 1948.

My conclusion is that properly drawn legislation would not violate any provision of the Federal or State Constitution. Two constitutional issues might be drawn in litigation attacking the proposed amendments and supplements to the Railroad Tax Law of 1948: (1) Validity under the equal protection provisions of both constitutions; and (2) validity under Article VIII, Section I, paragraph 1 of the State Constitution, which provides:

> "1. Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value; and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district."

I. Validity under the equal protection provisions of both Federal and State Constitutions.

The right of the Legislature to classify property for taxation is established beyond dispute. The Legislature may enact statutes dealing separately with the railroads including tax legislation. Such legislation has been upheld since *State Board of Assessors* v. *Central Railroad Co.,* 48 N.J.L. 146 (E. & A. 1886). Another settled principle is that the Legislature may exempt or treat separately classes of property so long as there is reasonable classification without discrimination against other classes of property. The Supreme Court in *General Electric Co.* v. *Passaic,* 28 N.J. 499 (1958) confirmed these basic principles.

City of Jersey City v. *State Board of Tax Appeals,* 133 N.J.L. 202 (Sup. Ct. 1945) is a square judicial holding supporting the taxation of railroad property at a lower rate than other property subject to a tax for the use of municipalities. Between 1941 and 1948 (P.L. 1941, c. 291) the railroads were charged a fixed rate of $3.00 per hundred dollars assessed valuation in lieu of local rates on all Class II property. The City of Jersey City attacked this legislation claiming among other things that the railroad property was not assessed "under general laws and by uniform rules, according to the true value," a mandate of Article IV, section VII, paragraph 12 of the 1844 Constitution, and that railroads were called upon to assume a lesser tax burden for their property than other owners.

The former Supreme Court reviewing the long recognized precedents concluded that property used for railroad purposes can be separately classified, with the burden unequal and subject to taxation at different rates. The Court of Errors and Appeals affirmed this holding in 134 N.J.L. 239 (E. & A. 1945) but modified the judgment as it pertained to the operation of the statute with relation to the amount of taxes due in the year 1941. At 133 N.J.L. 204, 205 Justice Perskie's opinion stated:

> "From the very beginning property used for railroad purposes has occupied and continues to occupy a separate classification, from all other property, in the field of taxation. The particular or special use to which railroad property has been and continues to be put is the basis which supports both its separate classification and the legislative power to impose a separate tax to be paid on property so classified and used. When, as here, the separate classification is proper and embraces all property in that classification, a law which taxes the property so classified may provide what tax the railroad companies, owners of the separately classified property, shall pay, and in what way it should be assessed provided that the assessment of their property is made 'under general laws and by uniform rules, according to the true value.' (Article IV, section VII, paragraph 12, state constitution). That has been and is the settled law of this State."

In *State* v. *State Board of Tax Appeals,* 134 N.J.L. 34 (Sup. Ct. 1946), aff'd per curiam, 135 N.J.L. 481, 482 (E. & A. 1947), the theory in *City of Jersey City* v. *State Board of Tax Appeals* was reaffirmed, the Supreme Court announcing that it is a firmly established principle of law "that it is the particular or special use to which the railroad property is in fact put which has supported and continues to supoprt its legally favored and separate classification, and which further supports the legislative power to impose a separate and different tax thereon so long as the classification is proper and embraces all property in that classification." 134 N.J.L. at 42.

Other New Jersey cases approving of legislation selecting railroads for special tax treatment include *Bergen & Dundee Railroad Co.* v. *State Board,* 74 N.J.L. 742 (E. & A. 1907) and *Central Railroad Co.* v. *State Board,* 75 N.J.L. 772 (E. & A. 1907). A compelling statement in support of the validity of tax legislation setting up a separate classification for railroad companies is found in *Florida Central and Peninsular R.R. Co.* v. *Reynolds,* 183 U.S. 471 (1902);

> "In the light of these decisions, if the State of Florida had deemed it for the best interests of its people to encourage the building of railroads by exempting their property from taxation, such exemption could not have been adjudged in conflict with the 14th Amendment, even though thereby the burden of taxation upon other property in the State was largely increased. Indeed that was the policy of the State prior to the Constitution of 1868. And, conversely, if the State had subjected railroads to taxation, while exempting some other class of property, it would be difficult to find anything in the 14th Amendment to overthrow its action. The mere fact that such legislation may operate with harshness is not of itself sufficient to justify the court in declaring it unconstitutional. These matters of classification are of State policy, to be determined by the State; and the Federal government is not charged with the duty of supervising its action." 183 U.S. at 180.

II. Validity under Article VIII, Section I, paragraph 1 of the State Constitution.

Article VIII, Section I, paragraph 1 of the State Constitution requires tax assessment of all property under general laws and by uniform rules. This requirement would be met under the proposed legislation for the assessment of former Class II railroad property at true value or other uniform standard. Nor would there be any infringement of the mandate that property be assessed under general laws because of the recognized authorities cited supra that taxing statutes dealing separately with railroad property are general within that classification, in the constitutional sense. The further requirement for taxation at the general tax rate of the taxing district is inapposite. This provision is limited to property "assessed and taxed locally or by the State for allotment and payment to taxing districts."

The history of the Constitutional Convention in 1947 fully supports the conclusion that property taxed by the State and for the use of the State was not subject to the terms of the second sentence of Article VIII, Section I, paragraph 1, which fixes the requirement of taxation of property for the use of local taxing districts at a general tax rate. There were several principal proposals concerning taxation of real estate.

The Committee on Taxation and Finance originally provided that "property shall be assessed for taxes under general laws and by uniform rules, according to its true value." See II *Proceedings of the Constitutional Convention of 1947,* 1237 (hereinafter referred to as "Proceedings"). This sentence merely would have carried forward the provision in Article IV, Section 7, par. 12 of the Constitution of 1844, which provision was added in 1875. There were several proposals to amend it. Frank Hague Eggers offered an amendment to the committee proposal which would have provided:

> "Property shall be assessed for taxation under general laws and by uniform rules, according to its true value. Real property now defined by law as Class II railroad and canal property shall be assessed for taxes as herein-

above provided and shall be taxed at the local tax rate of each municipality wherein such property is located, and the proceeds thereof shall be paid to each such municipality."

Amendment No. 16 to the committee proposal was introduced by William T. Reed and was ultimately adopted on the floor of the convention as the present Article VIII, Section I, par. 1. II Proceedings, 1245; I Proceedings, 785. In addition, a proposal was introduced by Clyde W. Struble which would have provided:

"Property shall be assessed according to classification and standards of value to be established by law."

Milton B. Conford before the Committee on Taxation and Finance offered a proposal which would have provided:

"Property shall be assessed for taxes under general laws and by uniform rules, according to its true value. The burden of direct taxation upon all real property not exempted shall be equal."

Frank Murray, who spoke against the adoption of the Reed amendment, emphasized that the compromise amendment merely fixed one standard of value and one rate insofar as the real property was being assessed "by the State for allotment and payment to the tax district." I Proceedings, 780. It is evident that the delegates consciously avoided freezing Class II railroad property as a source of municipal tax revenues exclusively.

Similarly, rejection of the Conford proposal that the burden of direct taxation upon all real property not exempted should be equal indicates an intent to permit classification so long as the tax is not being assessed and levied for local purposes and is further strong comfirmation of the sanction for taxation of railroad property at special rates, provided that such taxation is not imposed by the State for allotment and payment to municipalities.

Very truly yours,

DAVID D. FURMAN
Attorney General