



1943

The Valuation of Stock in a Closely-Held Corporation for Federal Gift and Estate Tax Purposes

Robert A. Sprecher
De Paul University

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Taxation-Federal Estate and Gift Commons](#)

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Sprecher, Robert A. (1943) "The Valuation of Stock in a Closely-Held Corporation for Federal Gift and Estate Tax Purposes," *Kentucky Law Journal*: Vol. 31 : Iss. 4 , Article 3.
Available at: <https://uknowledge.uky.edu/klj/vol31/iss4/3>

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

THE VALUATION OF STOCK IN A CLOSELY-HELD
CORPORATION FOR FEDERAL GIFT AND
ESTATE TAX PURPOSES

ROBERT A. SPRECHER*

Whenever shares of corporate stock are the subject of a gift or form part of an estate it becomes necessary to evaluate such shares for the purpose of Federal Gift or Estate Taxes. Treasury regulations provide that the value of property in general and of stock and bonds in particular shall be, for tax purposes, the "fair market value." Stock in a widely-held corporation can be evaluated in a relatively simple fashion by ascertaining actual market value. But stock in a closely-held or "family" corporation is seldom listed on any exchange and if it is listed, the market value is not the "fair market value" defined in the regulations. How can such shares be evaluated for tax purposes?

The best introduction to the subject of valuation of closely-held stock is contained in a passage from the Board of Tax Appeals decision in the case of *James Couzens*.¹

"Nothing could better reveal the lack of a recognized standard for ascertaining value than this record. Opinions were as freely sought from and given by witnesses who could only give a categorical answer to the ultimate question of value with no supporting reasons for their opinions as those who had by a meticulous analysis assigned a relative weight or significance to each fact or assumption and arrived by mathematical processes at a figure of value. These witnesses included executive heads of automobile manufacturing corporations, accountants, engineers, economists, statisticians, bankers, brokers, and teachers. This testimony was all treated by counsel as expert testimony. The opinions were received in evidence in the light of the qualifications which the examination of the witnesses disclosed. The conflict of opinion however and the diversity of reasoning by which such opinions were arrived at indicate that the problem of valuation of the common stock of a closely owned manufacturing corporation has not yet been developed so far that any particular method of reasoning in respect of it is authoritative or any particular class of

* B. S., 1938, J. D., 1941, Northwestern University; Lecturer, De Paul University Law School; Member of the Chicago Bar; Author, *Industrial Disputes in Time of War and Peace*. (1941) 36 Ill. L. Rev. 290.

¹ 11 B.T.A. 1040 (1928) at pp. 1164-5. This case is discussed at length *supra*.

persons may be recognized as experts. There is likewise no method of arriving at such value which, so far as our research and the briefs of counsel show, has been established in the law as controlling. The facts and circumstances must be fully known in each case together with any available evidence of their interrelation and importance, and from this in its entirety the independent judgment of the Board must be derived."

The process of evaluating closely-held stock is thus one of considering and weighing the various factors and elements which the Treasury Department, the Board of Tax Appeals (now known as the Tax Court), and the courts have determined to be of importance.

I. THE FACTORS REQUIRED BY THE REGULATIONS TO BE
CONSIDERED IN DETERMINING THE VALUE OF
CLOSELY-HELD STOCK

The Federal Gift Tax statute provides as follows²

"If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift."

The Gift Tax regulations provide³

"The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell. The value of a particular kind of property is not to be determined by a forced sale

² Section 1005 of the Internal Revenue Code, which reenacts Sec. 506, 1932 Act.

³ Art. 19 (1), Reg. 79, as amended by T.D. 4901 (May 18, 1939). Art. 10(a), Reg. 80, as amended, pertaining to the Federal Estate Tax, is similar. Prior to the amendment of May 18, 1939, Art. 19(1) provided as follows in the 1936 Edition of Reg. 79:

"The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The value of a particular kind of property is not to be determined by a forced sale price or by an estimate of what a whole block or aggregate would fetch if placed upon the market at one and the same time. Such value is to be determined by ascertaining as a basis the fair market value at the time of the gift of each unit of the property. For example, in the case of shares of stocks or bonds, such unit of property is a share or a bond. All relevant facts and elements of value as of the time of the gift should be considered. *Depreciation or appreciation in value subsequent to the time of the gift are not relevant factors and will not be considered.* (Italics indicate parts of 1936 Regulation omitted by the amendment of May 18, 1939.)

price. Such value is to be determined by ascertaining as a basis the fair market value at the time of the gift of each unit of the property. For example, in the case of shares of stock or bonds, such unit of property is a share or a bond. All relevant facts and elements of value as of the time of the gift should be considered."

After this statement of valuation of property in general, the regulations provide the basis for the valuation of stocks and bonds.⁴

"The value at the date of the gift in the case of stocks and bonds, within the meaning of the statute, is the fair market value per share or bond on such date.

"If actual sales or bona fide bid and asked prices are not available, then, the value is to be arrived at, in the case of shares of stock, upon the basis of the company's net worth, earning power, dividend-paying capacity, and all other relevant factors having a bearing upon the value of the stock. Complete financial and other data upon which the donor bases his valuation should be submitted with the return."

In nearly every case of valuation of closely-held corporate stock, the courts or the Board of Tax Appeals expressly state that the three elements of valuation required by the regulations—net worth, earning power and dividend-paying capacity—have been given full consideration. If other relevant factors have been presented, the regulations require that they also be considered, but the courts do not always state that such factors have been considered. However, since net worth, earning power and dividend-paying capacity must be considered, they are the most important factors and the other factors are dealt with as supplementary

A. EARNINGS

1. *Importance of Earnings.*

The Board and courts have on several occasions indicated that earning power is the most important of all factors in determining the value of the stock in a closely-held corporation.

In the leading case of *James Couzens*,⁵ the taxpayer had sold 2,180 shares of stock in the Ford Motor Co. for \$29,308,857.90, an average price of \$13,444.43 per share. The stock had been acquired prior to March 1, 1913, for \$44,900, a

Art. 19 (3), Reg. 79, as amended by T.D. 4901 (May 18, 1939). Art. 10(c), Reg. 80, as amended, pertaining to the Federal Estate Tax, is similar. Prior to the amendment of May 18, 1939, Art. 19(3), as provided in the 1936 Edition of Reg. 79, was substantially identical to the article as it now stands.

⁵ 11 B.T.A. 1040 (1928).

price stipulated to be less than the fair market value on March 1, 1913. Therefore for gain or loss purposes under the income tax, the basis of the stock was the value as of March 1, 1913. In his 1919 return, the taxpayer computed his gain on the basis of a 1913 value of \$9,489.34 per share, resulting in a gain of \$8,622,096.70. The Commissioner computed the stock value at \$3,547.84 per share, resulting in a gain of \$21,574,406.70.

The Board of Tax Appeals valued the stock as of March 1, 1913, at \$10,000 per share, resulting in a gain of only \$7,508,857.90. The Board said ⁶

"The evidence throughout the proceeding indicates what would otherwise seem reasonably clear, that the primary data from which value of this stock should be judged are those relating to the corporation's earnings, and especially those affecting the extent of earnings which might reasonably be expected in the future. All other data are apparently probative only in so far as they help to measure future earnings. Standing alone, the entire past history of the company means nothing as to money value except as it has become embodied in convertible assets at the date in question. To liquidate a business or its assets requires no knowledge of its history. But in a case such as this, the historical facts are considered because the prospects must be gauged; and they are relevant only in so far as they illumine the future. There is nothing dogmatic about it. The conventional statistical studies covering five years preceding the date in question have no sanction *per se*, but only if, sensibly considered, they provide some index of wealth to come. So the trend of past events and statistics is important in a business such as this because it helps to indicate whether the business is expanding, and, if so, how rapidly

"Since it appears clearly from the evidence that the earnings are entirely consistent with all the other data, earnings may fairly be looked upon as reflecting the financial progress and condition of the business. They are a financial compendium of the several factors which otherwise indicate the trend. The purpose of a business such as this is to make profit, and its stock should be appraised with reference to this. Primarily, the earnings are the test of success of the past and the indication of the future. The other statistics—of production, sales, etc.—and the description of the management and its methods and plans, serve to give depth and perspective to the earnings. Such other facts help to indicate the safety with which the earnings may be relied upon as indicating a normal or healthy condition. They are significant not of their own weight or force but only in their relation to earnings."

In the Estate of *James P Hooper*,⁷ the decedent died on August 3, 1933, leaving as part of his estate 3,613 shares of the stock of the William E. Hooper and Sons Co., which were held in trust for the benefit of decedent and his wife. The executor did not include the property of the trust in decedent's estate.

⁶ *Ibid.* at pp. 1170-1.

⁷ 41 B.T.A. 114 (1940).

The Commissioner included the trust property, valuing the shares at \$100 per share.

The Board of Tax Appeals valued the shares at \$45 per share. The Board said:⁸

"A study of all of the evidence convinces us that there were no actual sales of the stock to serve as a basis for determining what a willing buyer and a willing seller would agree upon as a fair price. In the absence of sales, the material factors to be considered in determining the fair market value of the stock of a close corporation, such as we are now dealing with, are: earning capacity and anticipated profits; book value; dividend yields; and such other facts and circumstances surrounding the corporation and its business as would be considered by a prospective buyer and seller. A prospective buyer would give some consideration to the book value of \$145 a share. He would realize, however, that the company was a going concern, and that, even if it be assumed that the book value could be realized upon the liquidation of the corporation, there was no indication that it was to be liquidated. Moreover, he would also realize that 'minority stock interests in a "closed" corporation are usually worth much less than the proportionate share of the assets to which they attach.' *Cravens v. Welch*, 10 Fed. Supp. 94. In our opinion, the factor which he would consider as the most important would be what the stock would earn. See *Borg v. International Silver Co.*, 11 Fed. (2d) 147."

2. *The Period of Earnings to be Considered.*

Randolph Paul says:⁹

"The standard earnings valuation formula capitalizes the earnings of a *representative period* at a given rate. The word 'representative' signifies a 'fair selection of years,' a period which reasonably affords a basis for prediction as to the future. The rate to be used is supposed to conform to the risk factors in the industry and the particular business. This short statement of the underlying principle is enough to point to the difficulties of the problem. If we are to take the earnings of a representative period in the past, what is a representative period? How many years shall be included in the period? How shall we allow for peculiar nonrecurring conditions which may have no bearing upon the future?

"The number of years constituting a representative period is not a question of law, but one of fact. No definite number of years can be made to apply to all cases; the length of the period to be considered is to be determined in each particular case. A fair estimate can result only when the past years considered are fairly indicative of the probable future earnings. Cases vary to the number of years to be taken. Ordinarily the period to be taken should not be less than five years. Abnormal years, whether above or below the average, should be eliminated."

Paul's statement that the period should not be less than five years finds support in A.R.M. 34, discussed *supra*, where the capitalization formula is applied to "average earnings over a

⁸ *Ibid.* at p. 129.

⁹ *Paul, 2 Federal Estate and Gift Taxation*, pp. 1290-1.

period of years prior to March 1, 1913, preferably not less than five years. ”

In *White and Wells Co. v Commissioner*,¹⁰ the sole point in dispute was the amount of profit realized by the taxpayer in 1920 upon the sale of a paper box factory as a going concern and this in turn depended upon the value on March 1, 1913. The court said:¹¹

“The Board of Tax Appeals was of opinion that the going concern value on March 1, 1913, should be predicated upon operating results covering the years 1910, 1911, and 1912; and, by applying to these years the formula for the computation of good will value set forth in Appeal and Review Memorandum 34 (2 C.B. 31), the Board obtained the figure it adopted, \$31,441.60. Had the formula been applied to the five-year period, it would have produced the value claimed by the petitioner; namely, \$73,689.75.

“The application of the said formula is not the exclusive way to value good will; but its use in appropriate cases has been sanctioned not only by the Board of Tax Appeals but also by this court. *Pfleghar Hardware Specialty Co. v. Blair* (C.C.A.) 30 F (2d) 614. If it is to be used, however, it should be so applied as to be a fair measure of valuing good will; that is, the past earnings to which the formula is applied should be such as fairly reflect the probable future earnings. As stated by the general counsel of the Bureau of Internal Revenue, ordinarily the period taken should not be less than five years, and abnormal years, whether above or below the average, should be eliminated. S. R. 5545, IV-2 C.B. 242. See, also, *Independent Aetna Sprinkler Co. v. Commissioner*, 15 B.T.A. 521, 534; *Mead Cycle Co. v. Commissioner*, 10 B.T.A. 887, 895; *D. M. & E. Walter & Co. v. Commissioner*, 10 B.T.A. 620, 629; *Appeal of C. F. Hovey Co.*, 4 B.T.A. 175. Pertinent also are state tax decisions recognizing that abnormal years should either be disregarded, or a long enough period taken so that unusually bad years may be offset by unusually good ones in order to get a fair average. In *re Dupignac's Estate*, 123 Misc. Rep. 21, 204 N.Y.S. 273, 281; In *re Ball's Estate*, 161 App. Div. 79, 146 N.Y.S. 499, 503; In *re Bolton's Estate*, 121 Misc. Rep. 51, 200 N.Y.S. 325, 327; In *re Lincoln's Estate*, 114 Misc. Rep. 45, 185 N.Y.S. 574, 576. Thus the Board did not do in the case at bar. It included the year 1911, which was evidently abnormally poor, since it was under the same price-fixing contracts as the profitable years 1910 and 1912, but it refused to include either of the exceptionally good years of 1908 and 1909. The reason given for their exclusion, namely, that they fell under contracts antedating those in effect on March 1, 1913, we cannot regard as valid. The issue before the Board was not the value of the particular five-year contracts under which the taxpayer was operating on March 1, 1913, but the value of the good will at that date. Even if the contracts had been so unfavorable to the taxpayer as to result in operation at a loss for the contractual period, it would not necessarily follow therefrom that the taxpayer had no good will in 1913. Other factors relevant to the probable future earnings of the factory for an indefinite future time would have to be considered. The experience of the company in the past, though under contracts other than those in force at the time, would normally be an appropriate consideration. The formula which the Board applied can result in a fair estimate of

¹⁰ 50 F.(2d) 120 (C.C.A. 2nd, 1931).

¹¹ *Ibid.* at pp. 121-2.

good will only when the past earnings which are considered are fairly indicative of the probable future earnings. Hence we think it was erroneous to apply the formula to a period of only three years, one of which was exceptionally poor.

"The petitioner asks us to direct the Board to apply the formula to the five-year period, which would result in fixing the value of good will at the figure \$73,689.75. We do not think we are at liberty so to do. The period to be used is, within limits of fairness of application, to be determined by the Board. It may select a longer period than five years or a shorter period, if the years selected fairly reflect average past earnings.

"Without the use of the formula, the record is not sufficient either to sustain the valuation adopted by the Board or the valuation claimed by petitioner."

3. *The Rate of Capitalization.*

(a) *The A.R.M. Formula and Intangibles.*

The capitalization formula set out in A.R.M. 34¹² is a method for determining the combined value of tangible and intangible assets. The average tangible assets over a certain period of time is first determined. Then a certain percentage (10% in the example given) of the average tangible assets is deducted from average earnings over a similar period and the remaining average earnings are allocated to intangible assets and capitalized at a certain percentage (20% in the example given). The value of intangibles thus found is added to the total tangibles, which is the book value at the date for which value is being sought.

A.R.M. 34 reads as follows¹³

"The third method and possibly the one which will most frequently have to be applied as a check in the absence of data necessary for the application of the preceding ones, is to allow out of average earnings over a period of years prior to March 1, 1913, preferably not less than five years, a return of 10 per cent upon the average tangible assets for the period. The surplus earnings will then be the average amount available for return upon the value of the intangible assets, and it is the opinion of the Committee that this return should be capitalized upon the basis of not more than five years' purchase—that is to say, five times the amount available as return from intangibles should be the value of the intangibles.

"In view of the hazards of the business, the changes in popular tastes, and the difficulties in preventing imitation or counterfeiting of popular brands affecting the sales of the genuine goods, the Committee is of the opinion that the figure given of 20 per cent return on intangibles is not unreasonable, and it recommends that no higher figure than that be attached in any case to intangibles without a very clear and adequate showing that the value of the intangibles was in fact greater than would be reached by applying this formula.

"The foregoing is intended to apply particularly to businesses put out of existence by the prohibition law, but will be equally applicable

¹² 2 C.B. 31.

¹³ *Ibid.* at 32-3.

so far as the third formula is concerned, to other businesses of a more or less hazardous nature. In the case, however, of valuation of good will of a business which consists of the manufacture or sale of standard articles of every-day necessity not subject to violent fluctuations and where the hazard is not so great, the Committee is of the opinion that the figure for determination of the return on tangible assets might be reduced from 10 to 8 or 9 per cent, and that the percentage for capitalization of the return upon intangibles might be reduced from 20 to 15 per cent.

"In any or all of the cases the effort should be to determine what net earnings a purchaser of a business on March 1, 1913, might reasonably have expected to receive from it, and therefore a representative period should be used for averaging actual earnings, eliminating any year in which there were extraordinary factors affecting earnings either way. Also, in the case of the sale of good will of a going business the percentage rate of capitalization of earnings applicable to good will shown by the amount actually paid for the business should be used as a check against the determination of good will value as of March 1, 1913, and if the good will is sold upon the basis of capitalization of earnings less than the figures above indicated as the ones ordinarily to be adopted, the same percentage should be used in figuring value as of March 1, 1913."

In using this formula, the percentages to be selected depend upon the risk and hazard of the industry itself and of the particular company under consideration. The following table of percentages have been employed in different cases.

	Per cent of average tangible assets deducted from average earnings	Per cent at which average earnings al- locable to intangibles are capitalized
DuPont v Deputy, 26 F Supp. 773 (D. Del. 1939)	6%	12%
A. R. R. 2954, CB II-2, p. 202	7%	10%
Citrus Soap Co. v Lucas, 42 F (2d) 372 (C. C. A. 9th, 1930)	8%	8%
A. R. R. 252, CB 3, p. 46	8%	11%
Dwight and Lloyd Sintering Co., 1 B. T. A. 179	8%	15%
G. R. Kinney Co., 26 B. T. A. 1091, 1097	8%	15%
Cushing v. U. S., 18 F Supp. 83 (1937), aff'd. <i>sub. nom.</i> U. S. v. Dickinson, 95 F (2d) 65 (C. C. A. 1st, 1938)	8%	15%
C. F. Hovey Co., 4 B. T. A. 175	8%	20%
Grant Trust and Savings Co., 3 B. T. A. 1026	8%	33 $\frac{1}{3}$ %
Gould Coupler Co., 5 B. T. A. 499, 512	9%	16 $\frac{2}{3}$ %
Hupfel Co., 9 B. T. A. 944, 950	10%	15%
Shanley and Furness, 21 B. T. A. 146	10%	15%
St. Louis Screw Co., 2 B. T. A. 649	10%	20%
Pennsylvania Central Brewing Co., 9 B. T. A. 264, 268	10%	20%
Corning Glass Works, 9 B. T. A. 771, 788, modified, 37 F (2d) 798 (App. D. C., 1929), <i>cert. den.</i> 281 U. S. 742 (1930)	10%	20%
Central National Bank, 29 B. T. A. 719	10%	20%

The manner in which the A.R.M. 34 formula is employed is clearly set out in *DuPont v Deputy*.¹⁴

"Dr. Friday also determined the value of Christiana stock by another accepted method. He examined the balance sheets of General Motors and DuPont Company and determined that the tangible assets of these companies as shown by their statements amounted to \$674.19 per share of Christiana Securities common stock. In other words, the tangible assets back of Christiana were less than \$700 per share. Any other value of Christiana stock would be represented by good will, patents, formulae, or excess earning power. 6% of the tangible assets yielded \$40.45. Deducting that amount from the earnings of \$90.71 he found the average excess earnings of \$50.26 to be earnings attributable to intangibles. Capitalizing \$50.26 at 12% he found the value of intangibles to be \$418.83. Adding the value of the tangibles and intangibles he arrived at a value of \$1,093.02 for a share of Christiana Securities Company. This method of determining value is a form of valuation which has been recognized and used by the courts for many years. It is founded on the principle that a business man will expect a return of at least 6% on money invested in tangible assets. Generally the courts have not used more than five years purchase in determining the value of intangibles or good will."

The method is also set out in A.R.R. 2954:¹⁵

"The Committee is of the opinion that the fair value of the appellant's assets as of March 1, 1913, should be computed upon the basis of a 7 per cent return upon tangibles and a 10 per cent return upon intangibles. This basis is arrived at after a careful study of the earnings of the corporation from the date of its organization in 1889. The average earnings after taxes of the appellant for the five-year period 1908 to 1912, inclusive, were 1.98x dollars. After allowing a 7 per cent return upon the average tangibles of the period, 9.38x dollars, the amount of the earnings allocable to the intangibles is 1.33x dollars, and the capitalization of these earnings upon a 10 per cent basis shows that the value of the intangibles as of March 1, 1913, was 13.27x dollars. The book value of the tangibles on July —, 1919, was 8.24x dollars and the appreciation to March 1, 1913, carried down to July —, 1919, per A-2 letter dated September —, 1922, was .49x dollars. The depreciated cost of the tangibles as of July —, 1919, was, therefore, 8.72x dollars, and the total cost or fair market value of tangibles and intangibles as of March 1, 1913, on the date of sale, was 21.99x dollars. The profit, therefore, realized by the appellant on the sale of its assets in 1919 is shown by the following:

"Sold for		Dollars
		30x
	Dollars	
"Book value of tangibles on July —, 1919....	8.24x	
"Appreciation to Mar. 1, 191349x	
"Good will Mar. 1, 1913	13.27x	
	22x	
Net profit		8x"

¹⁴ 26 F Supp. 773 (D. Del. 1939), at p. 780.

¹⁵ C.B. II-2, p. 202, at p. 205.

(b) *The Straight Capitalization Formula.*

In cases where value is thereby clearly reflected, it is possible to employ a simple capitalization formula of average earnings multiplied by a certain percentage, which is determined by considering the ordinary rate of return for the industry and for the company under consideration. Such a formula does not necessarily ignore good will and other intangibles, but instead of employing two known quantities as in the A.R.M. 34 formula (average tangible assets and average earnings), it uses merely one (average earnings)

In *DuPont v Deputy*,¹⁶ the straight capitalization formula was used and approved, and the result was further fortified by the fact that the value was approximately the same when the A.R.M. 34 formula was applied. In that case the taxpayer had made a gift of 8600 shares of common stock in the Christiana Securities Company by executing two trusts of 1600 shares each on December 15, 1934, and nine trusts of 600 shares each on December 22, 1934. In his return the taxpayer valued the shares at \$1,080 per share. The Commissioner valued the stock at \$1,812.329 per share and assessed a deficiency. The taxpayer paid the deficiency under protest and then brought suit against the Collector in the District Court.

The Commissioner had determined the value of the stock by using the market prices of the stocks which the Christiana Securities Co. held. Both sides introduced expert testimony. The Court gave the greatest consideration to Dr. David Friday, one of the taxpayer's experts. Dr. Friday's value of \$1,093.02 per share, computed by means of the A.R.M. 34 formula, is discussed *infra*. He found a value of \$1,088.52 per share by means of a straight $8\frac{1}{3}\%$ capitalization formula. The Court said.¹⁷

"Dr. Friday determined that the value of 8600 shares of Christiana Securities stock could not be determined by the prices brought by the sales of a few shares; that such value could only be determined by an examination into the economic factors which determine value and which would be disclosed by an analysis of the stocks held by Christiana. He was of opinion that the valuation should be based upon Christiana's interest in the earnings of the underlying companies. Those earnings averaged \$90.71 per share. He explained that it was sound practice to value corporate stocks at not more than 10 times their average earnings. Here, however, Dr. Friday used a

¹⁶ 26 F Supp. 773 (D. Del. 1939).

¹⁷ *Ibid.* at pp. 779-80.

factor of 12 times the earnings of the underlying companies, or a capitalization rate of $8\frac{1}{2}\%$ which resulted in a higher valuation. Further, notwithstanding the highly competitive nature of the automobile industry and of the chemical business, he used 12 times earnings instead of 10 times earnings. Multiplying the average earnings of the underlying companies of \$90.71 by 12 he arrived at a value of \$1,088.52 for each share of Christiana. The same principle is expressed as a certain number of years purchase. Thus 12 years purchase indicates that the profits for 12 years would return the price paid."

The Court then went on to set the value of the stock at \$1,100, saying¹⁸

"The adoption of the rule of 12 times average earnings of the underlying companies for a series of years, or a capitalization rate of $8\frac{1}{2}\%$, furnishes the fairest method of determining the value of Christiana Securities Company common stock. The Supreme Court of the United States in determining the value of shares of stock adopted and approved the capitalization of average earnings over a period of years at the rate of 6%. *Virginia v. West Virginia*, 238 U.S. 202, 35 S. Ct. 795, 59 L. Ed. 1272.

"Plaintiff is entitled to a judgment against the defendant based upon a valuation of \$1,100 per share for the common stock of Christiana Securities Company and an adjustment of the subject matter "

B. *Dividend-Paying Capacity.*

Paul says:¹⁹

"We often look to dividend payments in connection with the valuation of corporate stock. No doubt the dividend yield of stock is to be given serious consideration in any valuation case, but this test of value is one to be circumspectly used and a number of other items of evidence must be checked at the same time. A dividend policy may be influenced greatly by tax considerations. Sometimes the purpose is to minimize the income taxes of the shareholders. The undistributed profits tax worked in the opposite direction and unquestionably stimulated dividend payments. We have to be careful, therefore, in these cases that we are not dealing with an unduly conservative dividend policy which may weaken the evidential effect of dividends as a valuation factor, or an unduly optimistic dividend policy which may weaken the corporation for the future, depriving it of necessary working capital."

In the *Estate of Albert H. Stearns*,²⁰ the decedent died the owner of 363 shares of stock in the A. T. Stearns Lumber Company. The executor filed a return of \$300 per share. The Commissioner valued the stock at \$351.94 per share. The Board of Tax Appeals affirmed the Commissioner, saying²¹

"The taxpayer bases his entire claim for a valuation of \$300 on the average dividends declared and paid from 1913 to 1923. The

¹⁸ *Ibid.* at p. 784.

¹⁹ Paul, *op. cit. infra* note 9, at pp. 1294-5.

²⁰ 1 B.T.A. 1252 (1925).

²¹ *Ibid.* at p. 1253.

corporation, however, has declared over that period only approximately 63 per cent of its net profits in dividends, and the balance sheet as of the close of 1921 shows an actual net worth in capital stock, surplus, and surplus reserves of \$871,962.80, or \$581.31 per share.

"The company has followed a conservative policy in respect of the payment of dividends, and, under such circumstances, the dividends paid are only one, and in this particular case a somewhat unimportant, criterion of the value of the stock. The value determined by the Commissioner is fully warranted by the facts."

Dividends should be of less importance in determining the value of stock in a closely-held corporation than in a widely-held company because in the former the few holders can agree among themselves to hold earnings in the company for later distribution.

C. *Book Value or Net Worth.*

Book value is usually given consideration but it is not as important a factor as earning power. Therefore, if there is a discrepancy between capitalized earning power and book value, the former will, in most cases, prevail.

Paul says²²

"Although the Board has commented upon failure to show book value, the preference of the courts is definitely for the market quotation method or the capitalization of earnings method. For book values are frequently erroneous, especially in the case of closely-held corporations, where a resort to book values is most necessary. There is rarely a case in which the value per share of corporate stock can be found by dividing book value of net assets by the number of shares. This is especially true in a depression. The capital stock of a corporation, its net assets, and its shares of stock are entirely different things. The value of one bears no fixed or necessary relation to the value of the other. This is particularly true as to minority interests in a closed corporation; such interests are usually worth much less than the proportionate share of the assets to which they attach.

"The unreliability of book values also derives in large part from the fact that they ordinarily represent original cost less physical depreciation, depletion, and obsolescence of property; furthermore, book values seldom take note of appreciation or decline in value. Accounts and notes receivable may be of doubtful worth. Book values fail, therefore, to represent present value. They may also represent unjustified write-ups. Depreciation is a conspicuously uncertain quantity because of the uncertainties involved in the repair and maintenance policy of the corporation. Unreliable as book values are with reference to tangible assets, they are perhaps even more unreliable as to intangible assets. The value of intangible assets is rarely fully appreciated, and it is deemed conservative book-keeping to eliminate them from the balance sheet. The conclusion of the matter must be that book or asset value is only to be used where no other standard accepted method is available; otherwise the book values merely serve the purpose of checking or tempering results otherwise obtained."

²² Paul, *op. cit. infra* note 9, at pp. 1296-8.

The possibilities for error inherent in the book value of a closely-held corporation are set forth in *Jerecki Mfg. Co.*²³ In that case the taxpayer petitioned the Board of Tax Appeals to determine the cost of the taxpayer's fixed assets for the purpose of computing invested capital and to determine the fair market value of such assets on March 1, 1913, for the purpose of computing depreciation. The Board said²⁴

"In computing invested capital, respondent accepted, subject to certain adjustments, the capital and surplus shown by petitioner's books. In computing depreciation, he also relied upon the books. He made no determination of value as of March 1, 1913. Petitioner insists and we in effect have found that these books were wholly unreliable for either of these purposes. Cf. *Union Metal Manufacturing Co.*, 1 B.T.A. 395; *Rockford Brick & Tile Co.*, 4 B.T.A. 313; and *Donaldson Iron Co.*, 9 B.T.A. 1081. Many of petitioner's records were lost in the flood of 1915. Such as were left could be read only by the use of a microscope. The books, such as they were, did not disclose the existence of a large part of petitioner's machinery and equipment. Often such cost as was shown was not the whole cost. There was no cost account on the books. Capital items were often charged to expense. There is nothing peculiar in this when we remember that this was purely a family affair. The business was begun by two brothers in 1852, and at the date of the hearing 92 per cent of its outstanding stock was held by their respective families. The strict method of accounting which prevails in those corporations whose stock is held by persons who have no tie except corporate success is not to be expected of corporations whose stock is held by close kindred. So it was here. Neither could these people, prior to the adoption of the Sixteenth Amendment, have foretold that March 1, 1913, would be the most important date in the history of their corporation, nor that the peculiar statutory concept of invested capital would become an important element in its taxation.

"Our findings as to the unreliability of the books are amply borne out by the testimony adduced at the hearing. Petitioner's president testified that he showed the revenue agent, whose report is the foundation of respondent's findings, three large machine tools valued at \$15,000 or \$20,000 apiece, which did not appear upon the books. The representative of the appraisal company testified that he and his associates made a complete search of the books and that wherever they found cost they used it; that often the cost found was only a partial cost and that time and time again they could not find any cost whatever for machines in actual existence and active use when the appraisal was made. Respondent's counsel subjected this witness to a most searching cross-examination and brought out that the cost of machine after machine could not be found in the books. The reason for this became apparent when it was developed that approximately two-thirds of the assets appraised were acquired prior to 1902 and that there was but little change between 1897 and 1902. The record discloses that the books of the company upon which respondent relied furnished an wholly inadequate basis for his determinations."

The Supreme Court of the United States looked with dis-

²³ 12 B.T.A. 1165 (1928).

²⁴ *Ibid.* at pp. 1175-6.

favor upon book value in *Virginia v West Virginia*,²⁵ a non-tax case involving the final adjustment between Virginia and West Virginia, dating back to their separation in 1863. The case was concerned with the proportion of the debt of Virginia which West Virginia agreed to assume and with the liability of the latter for interest thereon. The valuation of certain stocks became necessary to make the adjustment and the Court said:²⁶

"It is urged that the book value represents actual value where books are correctly kept. This is not necessarily true, as books may be said to be correctly kept, in a sense, when they truly state the items set forth. But cost carried forward may not be the same as present value. Despite repairs and renewals, a suitable allowance for depreciation may not have been made. It would be too much to say that there is any controlling presumption and it clearly would not have been just to value the shares on a statement of book cost and surplus without taking into consideration the earning capacity."

II. OTHER FACTORS TO BE CONSIDERED IN DETERMINING THE VALUE OF CLOSELY-HELD STOCK.

A. INTRODUCTION.

Almost any factor which has any conceivable bearing upon value will be admissible as evidence of value. And the Board of Tax Appeals will consider and weigh these factors with the other factors mentioned before earnings, dividends and net worth. It should be noted, however, that the weight of these additional factors will usually be slight. But every ounce of weight may be important in finally tipping the scales.

The various factors which may have some bearing upon value are innumerable. The cases set forth hundreds of such factors. In the *Estate of James P Hooper*,²⁷ the Board said.

"In arriving at a value of \$45 per share for the William E. Hooper & Sons Co. stock, we have considered the stipulated facts, the testimony of three witnesses presented as experts by petitioner, and all other evidence bearing upon the question. No witnesses testified as experts in behalf of respondent.

"All of the witnesses for petitioner were qualified to express opinions as to the value of the stock on the basic date, i.e., August 3, 1933. One testified that it was not in excess of \$20 per share; another testified to a value of between \$10 and \$20 a share, 'nearer ten than twenty' while the third arrived at a value of between \$15 and \$25, and stated 'it would work out under twenty' From their testimony it appears that they considered, among other things, the record of earnings, not only of the company itself, but also of its selling agent,

²⁵ 238 U. S. 202 (1915).

²⁶ *Ibid.* at p. 215.

²⁷ 41 B.T.A. 114 (1940), discussed *infra*, at pp. 127-8.

the Hooper Sons Manufacturing Co., for the years 1926 to 1931, inclusive, prior to the merger of these companies, and for the years 1932 and 1933, after the merger; the book value of the stock; the cash dividend record of the two companies; the impairment of the surplus account by losses of the business, and the maintenance of this account by transfers from depreciation reserves; the ratio of current assets to current liabilities; absence of any regular or established market for the stock; the fact that 3,613 shares constituted a minority interest; unsettled business conditions owing to the depression and other factors, and the availability of other more desirable stocks at low prices.

"In support of his contention that the stock had a fair market value of \$100 per share on August 3, 1933, respondent points to its book value of approximately \$145 per share; earnings of \$11 per share in 1933 and approximately \$10 per share in 1934; a definite upswing in the industry at the end of the month preceding the date of valuation; an entry on the books of the corporation of \$3,570 as the 'excess of par value over cost of 306 shares of the corporate capital stock cancelled during 1932'; the issuance by the corporation in 1932 of 340 shares at par; and evidence indicating that there were several inter-family transactions in the stock prior and subsequent to the decedent's death."

In the *Estate of Daniel P Hoover*,²⁸ the executor valued the preferred stock of the Hoover Company at \$50 per share and the Class A Common at \$5 per share. The Commissioner found these values to be \$95 and \$15 per share respectively. The Board of Tax Appeals valued the stock at \$83 and \$9 per share respectively. The Board said:²⁹

"The stock of the Hoover Co. has always been closely held and no sales of the preferred or class A common were made on, or near, the date of the death of decedent. The parties, conscious of this fact, have submitted, and we have given due consideration to, a detailed history of the company, its earnings and prospects; its unit and dollar sales year by year in comparison with its competitors; its position in the industry; the nature of its competition; the fact that its basic patent had expired and was being used by others; the probable effect of the maintenance of a capable research department and the development of other patents; its record of dividend payments; its balance sheets and statements of income and expenses; and the general economic conditions, including the fact that the banks and stock exchanges of the country were closed and it could not then be determined whether the depth of the depression had been reached or not. In addition, we have had the benefit of the testimony of nine witnesses, called by the respective parties as experts upon valuation, whose opinions and methods of valuation differed greatly."

In the *Estate of Joseph J Crowley*,³⁰ the executor valued 11,010 shares of stock in Crowley, Milner & Co. at \$2,202,000. The Commissioner's value was \$3,027,750. The Board of Tax Appeals' value was \$2,752,500. The Board said:³¹

²⁸ 38 B.T.A. 387 (1938).

²⁹ *Ibid.* at pp. 396-7.

³⁰ 25 B.T.A. 340 (1932).

³¹ *Ibid.* at p. 345.

"We are convinced on the record before us that the value of the decedent's stock at the date of his death was \$250 per share. In reaching this conclusion we have considered not only the evidence discussed above, but all of the other evidence, including that relating to the location of the store, its history, prospects, dividends, earnings and financial condition, the nature of the business in which it was engaged, and the pending litigation."

B. OTHER FACTORS OF SIGNIFICANCE.

1. *Opinion Testimony.*

(a) *Admissibility and Weight.*

Opinion testimony as to value is admissible in stock valuation cases although it is not given the weight which is usually given to such testimony in real estate valuation cases. In *James Couzens*,³² the Board said

"The method of valuation is in itself unimportant, so long as it gives due regard to all the facts and relevant evidence, and results in a value which has a reasonable relation thereto. There may be no slavish adherence to a formula, *Minnesota Rate Case*, 230 U. S. 352; *Georgia Ry. Co. v. R. R. Comm.*, 262 U. S. 625, and whether the method should proceed from a definite study of, say, original cost, see *Donaldson Iron Co.*, 9 B.T.A. 1081, or cost of reproduction new less depreciation, see *Paducah Water Co.*, 5 B. T. A. 1067, and compare *Rockford Malleable Iron Works*, 2 B. T. A. 817, or from general opinions of qualified witnesses, or from book value, or from recognized market quotations or other data, must depend upon the nature of the property under consideration and the extent to which such evidence bears a relation to its value. Moreover, since it is the stock we are considering and not the corporation's tangible or intangible assets, we are not directly concerned with a method, like, for instance, that set forth in A. R. M. 34, 2 C. B. (1920) 31, for arriving at the value of good will or other intangibles separately from the tangible or other assets, or a method for classifying or segregating the constituent parts which are reflected in the value of the stock representing the whole."

Paul says³³

"Opinion evidence stands on a different footing from other evidence. The Board and courts are not authorized to disregard evidence of a fact which is unchallenged either by contrary proof or destructive analysis unless the Board or court has knowledge of the subject matter sufficient to form a contrary conclusion; thus the Board is not authorized to discredit an unimpeached and uncontradicted witness, at least so long as such testimony is not inherently improbable. However, the Board has on many occasions refused to accept opinion testimony as to value, even opinion testimony which is unchallenged by the opposing party. The Board's prerogative is based on the basic function of opinion in the law of evidence; that function is to enable judicial bodies to arrive at facts. The Supreme Court has said of opinion evidence: 'But plainly opinions thus offered,

³² 11 B.T.A. 1040 (1928), discussed *infra*, at p. 1162.

³³ Paul, *op. cit. infra* note 9, at pp. 1314-15.

even if entitled to some weight, have no such conclusive force that there is error of law in refusing to follow them. This is true of opinion evidence generally, whether addressed to a jury or to a judge or to a statutory Board.'

"The Board may not, however, *arbitrarily* reject unchallenged opinion evidence. There must be some grounds in support of a rejection. The question must always be whether the value fixed by the Board is arbitrary and unsupported by substantial evidence, or whether it represents judicial determination reasonably founded upon evidence before the Board. Values found by the Board will be sustained in the appellate courts in spite of the Board's rejection of expert opinion if there is shown to have been any other substantial evidence upon which the Board relied, or 'where the evidence does not compel a contrary conclusion.' In one instance the court stressed 'common knowledge' in support of the Board's rejection of expert opinion. The weight to be given expert opinion testimony may, as in the case of any other evidence, be influenced by the general experience and knowledge of the members of the Board. But if expert testimony is rejected and a conclusion is reached through the Board's own knowledge and judgment, the record should show possession of such knowledge."

In *Am-Plus Storage Battery Co. v Commissioner*,³⁴ the taxpayer corporation petitioned the Circuit Court of Appeals to review a determination of the Board of Tax Appeals, affirming the Commissioner's decision that the amounts deducted by the corporation for officers' salaries were excessive. The Court, in affirming the Board, said:³⁵

"With respect to the purely opinion evidence adduced, to the effect that, in view of what they did and the results obtained, the compensation allowed to the officers was reasonable, it should be noted that there was no dispute in the evidence with respect either to the work done, or the results achieved, or the experience and ability of the officers. Such opinions, as is usual, were expressed with respect to the point upon which the board was required to pass. Such evidence, while competent and often exceedingly helpful, is not considered binding, in the sense that a tribunal before whom it is adduced is required to accept it, where same is contrary to the tribunal's own judgment of the result of the facts upon which the opinion evidence is based."

(b) *Expert Witnesses.*

Paul says:³⁶

"The qualification of the expert is a matter of first concern. There is no fixed rule about qualifications; expert witnesses must show knowledge of, and experience in, the business. The more experience the witness may show in the crucial field and the more familiar he is with the property subject to valuation, the greater will be the weight of his testimony. Lack of qualification goes to the *weight*, not the *admissibility*, of expert testimony. Whether a witness is

³⁴ 35 F (2d) 167 (C.C.A. 7th, 1929).

³⁵ *Ibid.* at p. 169.

³⁶ Paul, *op. cit. infra* note 9, at pp. 1313-14.

qualified to testify as an expert is a question for the judge presiding at the trial, and his decision is conclusive unless clearly erroneous as a matter of law. A person is not qualified from giving an expert opinion by reason of the fact that he is a person interested. The taxpayer may, therefore, give his own opinion in his own case. However, it would be unwise to rely entirely upon such testimony."

In *DuPont v Deputy*, the Court, before setting out the formulae which Dr. David Friday used in evaluating the stock, set forth Dr. Friday's qualifications at great length:³⁷

"*David Friday.* After graduating at the University of Michigan in 1908 Dr. Friday continued as a teacher of economics, accounting and finance. In 1917 he was head of the Department of Economics of the Graduate School of New York University. In 1918 he aided the Post Office Department in fixing the awards of just compensation to the telegraph and telephone companies during Federal control. In 1919 he returned to the University of Michigan as professor of economics specializing in money and credit. In 1923 he became a lecturer in Brookings Graduate School of Economics and Research in Washington. Recently he has devoted himself to consulting work in economics and valuations. He has acted as a valuation expert for the Post Office Department, Michigan Railroad Commission, Attorney General of Michigan and United States Treasury Department. He has represented bondholders and stockholders in valuing their holdings. In 1926 he acted as an expert in the tax case of Senator Couzens involving the valuation of the stock of Ford Motor Company. In 1925 he was retained by the Automobile Manufacturers Association. He testified for the Government in valuing stock. He is a member of a number of economics societies and has written extensively on economic subjects.

"Dr. Friday testified that in preparation for this trial he had studied income accounts, balance sheets and annual reports of the DuPont Company from 1928 to 1935. Before trial he had studied them for the Laird Estate case. Also he had studied the annual reports and history of General Motors and the fluctuation of automobile profits. He had acquainted himself with sales on the New York Stock Exchange and with the list of private sales of stock of Christiana Securities Company. Generally he had done the necessary work upon which to base an opinion of the value of Christiana Securities Company stock. In valuing Christiana stock Dr. Friday sought to learn Christiana's share of the earnings of the corporations whose stock it owned either directly or indirectly. Its principal asset was the stock of DuPont Company. That company owned a large block of General Motors stock."

The qualifications of two other expert witnesses were set forth in detail.

Paul gives this additional advice about the use of opinion testimony:³⁸

"It is highly important that expert witnesses give the reasons for the testimony they offer. The value of opinion evidence depends a great deal upon its reasoning. Opinions by experts, which involve

³⁷ 26 F Supp. 773 (D. Del. 1939), discussed *infra*, at pp. 778-9.

³⁸ Paul, *op. cit. infra* note 9, at pp. 1914-15.

considerations and confusions rendering them of slight weight, will not be adopted as an expert judgment of value. The categorical opinion of an expert unsupported by facts is entitled to little weight, and the fact that the witness has not seen the property subject to valuation may be used against his expressed opinion. There must be underlying facts upon the basis of which an intelligent judgment can be made. The witness must give the reasoning and the factors of his valuation. It will be found that opinion evidence is ordinarily associated with and supplemented by other evidence."

2. *The Economic Conditions of the Times.*

Paul states:³⁹

"Nothing is better settled than the principle that general economic conditions existing at the date of valuation—especially the conditions in the particular industry—must be taken into consideration in determining the value of property. More important, so must the economic conditions for the future, as they are reasonably predictable at the date of valuation. The important consideration in valuation is always the future; valuations are essentially nothing more than predictions of profitable use. The past is relevant only in so far as it constitutes an index of what is to happen in years subsequent to the date of valuation."

Examples of cases where the Board considered economic depressions are numerous. For example, in the Estate of *Henry Walters*, the Board said:⁴⁰

"On November 30, 1931, the history of the Railroad showed steadily declining earnings, from the end of 1929 at about \$15 per share, to less than \$10 on the date of death. The stock prices had been going through a general decline, with occasional short spurts upward, since the middle of 1931, when in July it was in the 90's, in September in the 70's, in October in the 60's and 50's, until at the date of death it was, as has been seen, 43-45. Since, as the evidence shows, this performance was embedded in the general economic depression which was at that time well known and widely felt, there was no reason for belief that the downward trend had reached its end, so that stocks which could only be sold piecemeal over a substantial period would continue to command the price of that day. With the information at hand on that day which is present in this record, one could not reasonably have expected to realize for the entire 35,966 shares to be sold during the forthcoming months an average price reflected by a curve projected in any other than the general downward direction which it had taken in the recent past."

And in the *Estate of T. C. Thompson*, the Board said:⁴¹

"At the time of the death of T. C. Thompson, the cotton-mill industry was in an extremely depressed condition, wide fluctuations in the cotton market rendering it difficult to determine a manufacturing or a buying policy. While some improvement over the depth of the depression was at that time noted, the future was somewhat uncertain."

³⁹ *Ibid.* at 1320.

⁴⁰ 35 B.T.A. 259 (1937), at p. 263.

⁴¹ 3 B.T.A. 902 (1926), at p. 904.

3. *The Effect Given to Subsequent Events.*

It has already been noted that value is dependent to a great extent upon the prospects of the future as they appear at the date of value. Often, if not always, the *date of valuation*, as distinguished from the *date of value*, occurs at some time after the date of value. The question arises as to whether events subsequent to the date of value may be considered at the time of valuation. The answer to this question was stated with the greatest possible clarity in *James Couzens*:⁴²

"Serious objection was urged by respondent to the admission in evidence of data as to events which occurred after March 1, 1913. It was urged that such facts were necessarily unknown on that date and hence could not be considered. It was apparent that there was a fear that the Board would in reaching its judgment be influenced toward a higher value if it were permitted to see the evidence of increasing value after the date in question. The evidence was nevertheless admitted. It is true that value on March 1, 1913, is not to be judged by subsequent events. There is, however, substantial importance in the reasonable expectations entertained on that date. Subsequent events may serve to establish both that the expectations were entertained and also that such expectations were reasonable and intelligent. Our consideration of them has been confined to this purpose. Such subsequent events as have no reasonable relation to the considerations of the date in question have been disregarded. We have not, by looking at the subsequent events now known, found what the value would have been had they been definitely known on March 1, 1913. The only facts upon which our judgment of value has been predicated are those reasonably known on that date. These included not only those which had completely occurred, but also those which were in process and those which were reasonably in contemplation."

4. *Miscellaneous Factors.*

(a) *Par Value* is sometimes resorted to but it is a purely arbitrary concept and is of little aid or persuasiveness.

(b) *Cost*, original or reproduction, is not a satisfactory standard of fair market value.

(c) *Appraisals* are analogous to opinion testimony and as such are of less weight than the facts upon which they are based.

(d) And, of course, any evidence of prior sales, or bid or asked prices, are of importance.

⁴² 11 B.T.A. 1040 (1928), discussed *infra*, at p. 1165.

KENTUCKY LAW JOURNAL

Volume XXXI

May, 1943

Number 4

Published four times a year by the College of Law, University of Kentucky. Issued in November, January, March, and May.

Subscription Price \$2.50 per year.....\$1.00 per number

EDITORIAL BOARD

1942-1943

FACULTY OF THE COLLEGE OF LAW, ex Officio

ROY MORELAND, Faculty Editor

ROBERT M. SPRAGENS, Editor-in-Chief

HENRY BRAMBLET, Circulation Manager

BARBARA MOORE

LEO OXLEY

SCOTT REED

HELEN STEPHENSON

IRA G. STEPHENSON

JOHN J. YEAGER

W H. FULTON, JR.

JAMES COLLIER

The following members of the Law Journal staff are in the armed forces of the United States:

WILLIAM BUFORD

CARLETON M. DAVIS

MARCUS REDWINE, JR.

POLLARD WHITE

ADVISORY BOARD FROM THE STATE BAR ASSOCIATION

JOHN L. DAVIS, Lexington, Chairman

Term Expires 1943

MAC SWINFORD, Cynthiana

W H. FULTON, Frankfort

JAMES CAMMACK, Frankfort

ROY SHELBOURNE, Paducah

PETTUS WHITE, Hopkinsville

THOMAS BALLANTINE, Louisville

ERNEST WOODWARD, Louisville

EDWARD HUMPHREY, Louisville

CHESTER ADAMS, Lexington

WOODSON SCOTT, New York City

W L. MATTHEWS, JR.,
Bowling Green

Term Expires 1944

OSSO W STANLEY, Frankfort

H. CHURCH FORD, Georgetown

JOHN C. DOOLAN, Louisville

J. N. LOTT, JR., Louisville

JAMES PARK, Lexington

ELWOOD ROSENBAUM, Frankfort

MARSHALL BARNES, Beaver Dam

DAVID L. THORNTON, Versailles

JOHN H. CLARKE, JR., Maysville

ANDREW WARD CLARK, Covington

BEN T. COOPER, Benton