

NORTH TEXAS STATE UNIVERSITY

ORAL HISTORY COLLECTION

NUMBER

442

Interview with

Representative L. DeWitt Hale

July 12, 1977

Place of Interview: Austin, Texas

Interviewer: Dr. Ronald E. Marcello

Terms of Use: Open after 6-10-87

Approved: *L. DeWitt Hale*
(Signature)

Date: Sept. 22, 1978

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Oral History Collection
Representative L. DeWitt Hale

Interviewer: Dr. Ronald E. Marcello

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Dr. Marcello: This is Ron Marcello interviewing Representative DeWitt Hale for the North Texas State University Oral History Collection. The interview is taking place on July 12, 1977, in Austin, Texas. I'm interviewing Mr. Hale in order to get his reminiscences and experiences and impressions while he was a member of the 65th Texas Legislature.

Mr. Hale, let me start by asking you just a couple of very general questions at this point. Again, one of the first things that faced the legislators when they convened was a budget surplus of a little over three billion dollars. Now how did this affect the conduct of the Legislature as the session proceeded?

Rep. Hale: First, let me say that there was not a budget surplus of three billion dollars. That is an optical illusion in a sense. What happens is that under our pay-as-you-go amendment to the Constitution of Texas, the comptroller is required to certify to each session of the Legislature

the total amount of revenue available during the next biennium, either from money in the treasury or from money anticipated to come into the treasury as a result of existing laws. Then he's required to estimate what will be the total expenditures during the next biennium if the Legislature doesn't do anything this session, that is, based on existing law. He subtracts the second figure from the first and comes out with a bottom-line figure, which he says is the money available for this next Legislature to spend without going into a deficit posture.

That doesn't mean that there's a three-billion-dollar surplus. It means that the comptroller comes out with a bottom-line figure in saying that there is three billion dollars, approximately, available for expenditures during this time that's not committed by existing law. Now that money's not in the treasury, but it's money that he anticipates will be coming in from existing tax sources during the next biennium.

Secondly, it's not unusual in inflationary times for us to have this situation occur. With the trend we've had since World War II, there has always been more money to come into the treasury during the succeeding two years than the comptroller estimates, estimates which he admits are always conservative. So that every session of the Legislature, almost without exception and possibly without exception

since World War II, has had this situation exist--more anticipated revenue available than for the preceding biennium. So it wasn't an unusual situation.

The size of it this time was unusual. It was much larger than we had ever had before. The very size of it and the fact that there could be such a large amount of money committed for the next two years without having to levy a tax was an open invitation to all members of the Legislature to dust off all of their pet projects and get them on the drawing board and try to get their piece of the pie. To some extent, that happened during the session.

Marcello: Now, at the other end of the spectrum, there was still the governor's pledge that there would be no new taxes, and, of course, that had to be taken into consideration, also.

Hale: That's true. Governor Briscoe, throughout his career as governor, has maintained a posture that we were going to operate the state government without any new taxes. He's been adamant in that stand and consistent and, so far, successful. I think the reason he has been successful, at least in part, is because of the inflationary times in which we live, where each session of the Legislature has additional revenue coming in from existing tax resources so that it didn't have to levy any new taxes to meet current needs.

Marcello: Without being unfair to Governor Briscoe, is it safe to say that he, in a sense, has been a rather lucky governor in that he has had this surplus due to the inflation and through oil and gas revenues and so on and so forth? Somewhere down the line, it seems to me that some Texas governor is not going to be nearly so fortunate, because state spending has been increasing, actually, over the years.

Hale: It's been increasing in dramatic proportions; yes, it has. And some governor somewhere down the line is not going to be so lucky and is going to have to face the hard facts of life of either curtailing services or levying more taxes. That won't be an enviable role.

Marcello: Okay, I think one of the first major issues that came up before this Legislature was the highway appropriations bill. Now obviously, that was going to take a big chunk out of that so-called surplus. The governor labeled the highway appropriations bill as an "emergency" appropriation . . . an "emergency" piece of legislation. What effect does that have when the governor says that this piece of legislation has the "emergency" label on it?

Hale: It has a terrific impact on the posture of that legislation under the rules of both the House and the Senate and under the Constitution. There is a constitutional provision in Texas under which we still operate that is fairly archaic,

going back to the agrarian economy of the late 19th century when our Constitution was written. Theoretically, during the first thirty days of a session, we don't do anything but introduce bills. During the second thirty days of the session, we don't do anything but have committee hearings. Then it's the last sixty days of an "idealistic" 120-day session that we spend in debating the bills.

Under this constitutional provision, we can't take up anything for debate without suspending the rules unless it's an emergency matter submitted by the governor. The House rules and the Senate rules accommodate to that constitutional provision. The net result is that when a measure is labeled "emergency" by the governor, the Legislature can act on it at any time during the session, and, in effect, it is given priority under the rules.

As a matter of fact, we operate in the House under a calendar system, and the top calendar is the emergency calendar. The only items that go on the emergency calendar are bills that are submitted by the governor as an emergency. Once it comes out of the standing committee, a bill labeled emergency by the governor automatically gets top priority consideration on the floor. It will automatically be up for floor consideration as soon as the pending business is

disposed of.

Marcello: Were you fully expecting a highway appropriations bill to come forward? Maybe I should be more specific and say a highway appropriations bill of that magnitude or involving that much money.

Hale: I would say that I was mildly surprised at the magnitude of the bill, and I'd have to underline the word "mildly," because the groundwork and the homework had been done on that piece of legislation before the Legislature ever convened. I was invited to two or three meetings in the fall of 1976 by different groups who were interested in the highway program.

Marcello: Which particular groups were these?

Hale: They invariably would have a great deal of information and statistics available for those meetings, and people who apparently knew what they were talking about were making talks as to the serious curtailment that was beginning to take place in the highway programs because of a lack of funds. I'm sure meetings like that were going on all over the state with other representatives and other senators. They made a case for it. Now whether they made a case for an appropriation of the magnitude that went through is questionable; whether they made a case for giving highways top priority over other state needs is questionable.

But they were successful in doing it with the blessing of the governor, and so it was the first big bill passed that involved money, commitment of new money. Probably because of the governor's blessing, it was given top priority in dividing up the so-called surplus. I believe that bill, and you may have the exact figure, was somewhere close to six hundred million dollars, which was the final bottom-line figure on the bill when it finally passed. That took a sizeable chunk of the available revenue for the next two years.

Marcello: How did you personally feel about funding that much money for highways when weighing it against what you would have considered the other priorities in the state?

Hale: Well, I voted for the bill; however, I must confess that I had misgivings about its magnitude and its priority status ahead of every other function of government. It seems to me that any appropriation of that magnitude probably ought to be weighed along with the other needs of government, such as the needs of health and welfare; of education, public schools, and higher education; and of law enforcement and a few other problem areas. Each should be weighed with the others to establish a fair distribution of available funds. The way it operated this time, of course, the highways took what they needed, and then everybody sat down and started

dividing up what was left. I'm not so sure that we were wise in giving the highways the number one priority.

Marcello: Then, of course, also, is it not true that in giving highways that much money you were also having to dip into the general revenue fund in order to finance that highway appropriations bill?

Hale: Yes.

Marcello: How did you feel about using that procedure?

Hale: I didn't like that part of it, and I certainly didn't like the automatic financing of future needs. We copied the financing pattern of the minimum foundation program to set up a certain level of funding for the future, authorizing the comptroller to transfer funds out of the tax clearance fund or the general revenue, if necessary, to maintain that level of funding year after year. This means that the highways are now under an automatic financing system and will get their needs met irrespective of what the Legislature does. It will be an automatic situation, as is done now with public schools. That's automatic only to the existing level of operations. But I'm not so sure that we ought to automatically fund these programs. It's been done for education and a few other things, and every time we do any automatic financing, I have misgivings about it.

Marcello: And then, of course, some of the federal revenue sharing funds

would also be funneled into that, would it not?

Hale: Well, I'll accept your statement on that. I'm just not sure about the revenue sharing fund. There are a tremendous number of dollars that come into the state highway program from the federal government, but I'm under the impression that a great deal of that is on the interstate system on a nine to one matching ratio. I think they're approaching that matching ratio even on the U. S. highway system, other than the interstate. So there's a lot of federal money coming into that program.

Marcello: Okay, you mentioned a while ago that you had been contacted before the legislative session by a couple of groups who were interested in the highway appropriations bill. What particular groups were they?

Hale: Well, the Highway Department itself had some small luncheon meetings scattered over the state to which they invited members of the Legislature and in which they in a sense "propagandized" us. I would put quotes on the word "propagandized." I think it's their responsibility to keep us informed of their financial situation as they see it, and they were doing that. Yet, the effect of it was to more or less lobby with us for more money, and they did that by pointing out the alternative plans. The Highway Department had worked up three sets of budget figures, plans based on three budget programs: a liberal one and a

medium-sized one and a small one, depending on the amount of money. Each plan had been tailored to every highway district in the state. So they would point out to us in Corpus Christi what the effect would be in the Corpus Christi district on certain projects if there was not more money coming in. So it was an effective and well-organized presentation.

In addition to that, if I recall, the highway and heavy construction branch of the Associated General Contractors, I think, had a meeting at one time. Then it seems to me that the Chamber of Commerce put on a meeting or so on this same problem, in which the moving force behind it was probably an organization known as the Texas Good Roads Association.

So there were a number of different meetings. In each of these meetings, invites would go to the representatives and the senators of that area, all the county judges, and any other local officials that in any way had anything to do with highway construction and maintenance.

Marcello: After the bill was brought before the House, did the governor himself ever contact you, soliciting support for the bill?

Hale: No, I was never contacted by the governor or the governor's office on the bill, although I was well aware that he was strong for the bill and that his staff was.

Marcello: Representative Hale, would it be safe to say that probably

the vast majority of your time during this 65th Legislature was spent on matters concerning education?

Hale: A large part of it was certainly spent in the field of education. I get involved in a lot of matters here other than the ones I'm handling, but I would say that most of the time on legislation that I was personally sponsoring was spent in educational matters.

Marcello: We talked about this off the record a while ago, and for the record you might mention how you go about voting upon legislation which you, in many cases, don't have time to study and go over. Now as we mentioned, education was taking a tremendous amount of your time, so therefore what do you do with regard to other legislation that you perhaps don't have very much time to study and consider?

Hale: Every member of the Legislature faces the same problem to a greater or lesser degree. None of us has enough time during a session of the Legislature to become familiar with the many problems of Texas government, much less the solutions. So that by the very magnitude of the whole operation, each member must pick areas in which he is interested and concentrate his efforts in those areas, to have any influence at all. That means that the areas that he doesn't develop an interest in and spend some time on, he never becomes very familiar with the problems or the solutions. So, of necessity, with the

great multitude of problems, and the large number of bills and proposals which those problems generate, the individual member must rely upon the committee system to some extent in telling him what to do.

The United States Congress and every state legislative body operates on a similar organizational pattern known as the committee system. We divide our committees along subject matter lines so that the related bills in a given subject matter area go to the same committee. Each member of the Legislature becomes fairly well versed in the problem areas of the committees on which he serves.

But in the House this time, each member served on only two committees at the most. We had about nineteen or twenty standing committees, which means that there are a tremendous number of subject matter areas that the individual member doesn't get the benefit of the committee hearings and doesn't have the time to study the problems or the solutions. So what I do and what every member has to do is specialize. I take the lead in a few areas in which I have become relatively expert, and other members look to me for advice and counsel and suggestions as to how they should vote and what they should do in those areas. In turn, I look to other members in the same way in the subject matter areas in which they have developed some expertise and in which I have not had time to develop

that expertise. So I go to them and say, "Look, tell me about this in fifteen words or less." Then I decide how I'm going to vote.

So it's a matter of confidence. It's a matter of confidence in the committee system; it's a matter of confidence in some of the individuals that operate that system. You reach the point where you cast a great number, a large number, of your votes based on that confidence or lack of confidence, as the case might be, in people who are involved in the legislation.

Marcello: Now the teacher retirement bill was one of the important pieces of legislation that you guided through the Legislature during this session. Let's talk about that particular piece of legislation. First, what was the problem? Why did we need a new teacher retirement bill?

Hale: I don't know that there was a problem in the sense that you probably normally think of the term "problem." If there's a problem there, it was a slowly developing problem brought about by inflation and the erosion of the purchasing power of the dollar, plus the fact that the teacher retirement system in Texas is a relatively new system. It was started in 1937, and that's not very old as retirement systems go. As a result, it's a long way from having been fully funded, which is not necessarily bad because no retirement system is fully funded

until it gets to be a pretty old system. It takes a long time to fund the unfunded liabilities that you automatically start with when you install a new retirement system.

But the big problem was two-fold: one, having to do with the teachers who are already retired; secondly, having to do with the future retirement program for those teachers who are now active in the profession or about to become active.

Let's take the retired teachers first. The retirement benefits are based upon contributions. The teachers who retire under existing law are authorized to take an average of their five best earning years. Due to inflation, teachers' salaries have gone up dramatically just as all other government expenditures have gone up. But a teacher who retired ten or fifteen years ago was making a pittance by today's standards. That teacher can take the five best earning years and average them out and still not come up with very much in the way of a retirement benefit. Like savings accounts and government bonds and other types of fixed-dollar items, retirement systems are being killed by the inflationary spiral in this country, and the teacher retirement system is no different. So all of the teachers who retired more than two or three years ago are really beginning to feel the pinch in their ability to even exist on the retirement which they are drawing from the retirement system.

We voted a small increase for that group two years ago, and it required an appropriation of \$98,000,000 to fund that increase in benefits. We do fully fund benefits for retired teachers. Once a teacher retires, the liability of the system to pay that retirement benefit for the life of that teacher is fully funded.

This year we increased the benefits again for the retired teachers. This time it had a bottom line figure of \$120,000,000 for the benefits that we finally agreed to pay the retired teachers. That was based on a formula whereby the teacher who retired the farthest back would receive the largest increase this time. That was because the teacher who retired the farthest back had the lowest benefit, lowest annuity, because they had the lowest earning capacity during the years they were teaching. So that problem was met by an appropriation of \$120,000,000 to fund it, \$60,000,000 of which was appropriated during this biennium and \$60,000,000 of which was carried forward for an appropriation in the next biennium.

The second problem on retirement had to do with those teachers who are still actively teaching. That's a problem only in the sense that we need to plan ahead and be sure that we have an adequate program for these people when they reach retirement age. That's a significant factor in attempting to

obtain career teachers. In order to get good people into the teaching profession and hold them in the teaching profession, you need to have not only a good salary program, but you need a good retirement program.

Unfortunately, in Texas, we've had neither (chuckle) for most of the past. But we're slowly building both up to a respectable level. What we did for the active duty teachers today--those who have not yet retired--we increased the benefits that they will ultimately draw from the retirement system on the average by about 14 per cent. That was done basically by changing the formula whereby their annuity is calculated, from a 1.75 factor to a 2.0 factor. Take the number of years of service, multiply it by the factor for a percentage, which is multiplied by the best five-years average of earnings to give a retirement benefit. By raising the factor from 1.75 to 2.0, you automatically build in about a 12½ per cent increase in benefits. Then there was some adjustment made on the five-year average; I believe we changed that formula just a little. Anyway, it averaged out to about 14.6 per cent, I believe, as the average increase in the retirement benefit.

Marcello: Who approached you about sponsoring this particular piece of legislation?

Hale: That piece of legislation originated with the retirement system

itself, the teacher retirement system, working in cooperation with the Texas State Teachers Association, which a private organization of the teaching profession. Most of the teachers in Texas belong to the Texas State Teachers Association, and it is the trade association for teachers.

Marcello: What sort of roadblocks or opposition did this bill encounter in the House?

Hale: It had a lot of roadblocks generated primarily by Representative James Nugent from Kerrville. Representative Nugent was a victim in the last election of a very controversial election battle, and the Texas State Teachers Association and the teaching profession generally in that area supported his opponent. He became very bitter about it and for some reason decided to take it out in this session of the Legislature by being a constant harassment factor in school legislation. He zeroed in early in the session on the retirement system by issuing a blast through the press accusing the retirement system of mismanagement, in effect, financial mismanagement, and of fiscal insolvency. Neither of the charges did he actually support by the facts, but he made headlines and caused a lot of energy to be diverted into the defense of that system that otherwise could have been used to try to pass better legislation.

I worked with the retirement system and also with the TSTA, and they encouraged me and supplied me with data to

offset the damage Mr. Nugent was doing publicity-wise to the system. I made a speech on the floor of the House in which I outlined the basic facts of the retirement system and defended the system. There's no question but what it's actuarially sound, and Mr. Nugent was just on very soft ground when he insinuated that the system was not on a basis that would actuarially provide enough money to pay the benefits. It will; it's as solvent and as fiscally sound and as actuarially sound as any other retirement system in the country and in better shape than most of them.

But that was the background on it, on Mr. Nugent and on the retirement system. He was on the Education Committee, and I was not. He was named chairman of the subcommittee on the teacher retirement bill. He introduced a teacher retirement bill, which only provided benefits for those teachers already retired. He did not want to improve the retirement system at all; he just wanted to pay a little bit more benefit to retired teachers. That was the posture that Governor Briscoe had taken early in the session, and that was his recommendation. So between the Governor and Nugent, they kept all the bills bottled up for a time. In order to get our bill out, we had to go along with the delays. They had the votes in committee and eventually took the retired teachers out of my bill.

The bill I introduced gave benefits to retired teachers

and also included improvements for active professional personnel. The committee reported Nugent's bill for the retired teachers, then took out the part of my bill having to do with retired teachers, and reported it just for the teachers that are now in active service. That's the way it happened that two bills passed the House. The Senate promptly took my bill, put the retired teachers back into it, and passed my bill in substantially the form we wanted and sent it back to the House. So we got what we wanted, basically, in the bill and got it all in one bill.

The only real floor fight came on my motion to concur in Senate amendments to the bill. Nugent made a motion not to concur and send it to conference committee. I then moved to table his substitute motion, and the key vote came on the motion to table. The motion to table prevailed by a vote of 120-18. I believe was the vote but I'm not sure.

Marcello: How closely on a bill of this nature would you be working with Senator Mauzy over in the Senate, who chairs that body's Education Committee?

Hale: I work a lot closer with Senator Aikin simply because he and I have worked together for so many years that we almost think alike in the field of education. But I get along fine with Senator Mauzy. I've known Senator Mauzy for quite a few years, both as a fellow lawyer and as a fellow legislator, and he

and I think alike on a lot of problems. I work with him in a very fine, cooperative manner.

Marcello: Did you work closely with Senator Aikin on this particular piece of legislation?

Hale: Senator Aikin was handling the same retirement bill in the Senate, and we were fortunate in finally getting the House bill passed before the Senate bill was ready to be passed. Senator Aikin abandoned the Senate bill, picked up House Bill 612, which was the number given to it, and we passed it.

Marcello: Is this the appropriate place where we need to comment about the article in the July issue of Texas Monthly, when that particular magazine was highly critical of the manner in which you handled the teacher retirement bill? I'd like to get your comments on that particular article. Do you know the one I'm referring to?

Hale: I don't know that any place is really appropriate (chuckle) to comment on that Texas Monthly article. It doesn't do a great deal for my ego to have anybody, even Texas Monthly, pick me as one of the ten worst members of the Legislature. Frankly, I was amazed when I first learned of it. I guess any member would feel that way. Yet, I've been so active in the Legislature through the years that I have a basis for evaluating effectiveness, and I just can't see how they could rate me that low. Without any discredit to anybody, I could

go through name after name after name and tell you of members who just don't ever get involved in anything, who introduce relatively few bills, who just don't do enough to really become a force for good or ill in the Legislature.

It seems to me that the top ten and the bottom ten ought to be rated on the basis of their effectiveness, not on the basis of political philosophy. Texas Monthly is conducting its ratings not on the basis of how good or bad the member is, but on the basis of whether or not the member is doing what Texas Monthly wants done.

Proof of the bias and prejudice of Texas Monthly is evident. Four years ago Representative Nugent was picked in the bottom ten, and I was picked in the top ten. Now, four years later, they pick Nugent in the top ten and put me in the bottom ten. In the write-up on Mr. Nugent, they admit they rated him in the top ten this time for practically the same reasons that they rated him the bottom ten four years ago. Well, that doesn't make sense to me. I can't figure out the rationale on how they could have become so sour on me.

I looked back after the article came out and put my pencil to the record. I figured out, compared to four years ago, that I conducted just about the same session this time. I introduced about the same number of bills; I passed about

the same number of bills; I was involved in about the same number of floor fights on key legislation; I won about the same number and lost about the same number. In other words, the performance was, I thought, comparable between the last four or five sessions that I've been here. Yet, their appraisal of those efforts was dramatically different.

Marcello: How would you answer their criticism of the manner in which you handled the teacher retirement bill?

Hale: Well, I would simply say this, as I would on any piece of legislation: the name of the game is to get results. There are just a lot of ways you go about getting results. They said that I failed miserably in the way I handled the teacher retirement bill. Well, I started out to make certain improvements in the retirement system and to provide certain benefits for the retired teachers. The bill that was signed was my bill. It had the benefits for the retirement system almost verbatim the way I introduced it. It had a little bit better benefits in it for the retired people than I had started out with.

It was my bill that was finally signed, and the governor even honored me by signing it on my birthday, June 10, 1977. How they could say I failed miserably in handling the retirement bill is beyond me, when we got everything we wanted and a little bit more. They said Mr. Nugent won that battle and

I lost it; that's what they said in their article, Yet the only key vote on the floor, between Mr. Nugent and me, was the vote on my motion to table his substitute motion to send it to conference committee. I won that battle about 120-18 or some such vote.

Marcello: Let's move on to another subject having to do with education, and, of course, I'm referring to public school financing. Obviously, this particular piece of legislation took up a tremendous amount of time of every state legislator during this past session. Where do we begin in talking about public school financing?

Hale: I think you have to start with the governor, because the governor had indicated at the start of the session that he felt that it was one of the major topics for this session of the Legislature. The speaker of the House in his public statements also indicated he thought it was one of the major problems of this session of the Legislature. But both of them indicated that they felt that salaries of personnel should be handled separate and apart from all other facets of school finance. Therein was the battleground defined early.

Marcello: Why did they want the teacher salaries separated from public school finance?

Hale: I think you would have to answer that strictly in terms of dollars. Governor Briscoe and Speaker Clayton both represent

large rural constituencies. Governor Briscoe is reputed to be the largest single landowner in Texas; I don't know if that's true or not. I've heard it stated, and I've never heard it disputed. In any event, he is a large landowner. Mr. Clayton represents a rural constituency; his background is a rural, farming, ranching background. He is in that type of business himself. Their major concern is ad valorem taxation. That is their passion. They felt that the biggest single item of legislative finance was teacher salaries and that's true, because if you'll look at the entire financial picture of public school operations, eighty-five cents out of every dollar that's spent to operate our public schools goes to pay personnel. So when you're talking about school finance, 85 per cent of the problem is personnel. So what they wanted to do was take 15 per cent of the problem and pass a bill on that, which had to do with transportation, maintenance and operation, special education and equalization. Whatever the problem, they would solve it by using the divide-and-conquer technique to isolate teacher salaries so that when they got around to considering teacher salaries, the only ones who would talk for it would be the teachers themselves. That was the pitch and thrust of their ideas and their presentation.

Marcello: Can you go into a little bit more detail on what you mean by "divide-and-conquer?" I think this is an important point, and

I think we need to expand upon it a little bit.

Hale: When you have a school finance bill, as we have had in the past, one bill each session will cover all facets of public school finance. You then have a certain amount of debate and rivalry between the various elements of the public schools as to how you divide up whatever money is available. School board members, superintendents, parent-teacher associations, teachers, and various other groups differ in their ideas as to how the dollar for education ought to be divided. Some feel that you should put more in transportation; some feel that you should put more in special education; some feel that you should put more in teacher salaries; and some feel you should put more in equalization.

That's fine. What you do when you have a single bill is to look at the total picture. Then the Legislature finally decides how it's going to divide up the education dollar. You encompass it all in a single bill; then everybody unites behind that bill and passes it. While competing groups may not get everything they want, they get enough that they support the end product. As a result, there have been bills passed in the past which put a lot more money into teacher salaries than some of the state leadership felt was justified or wanted.

By this technique of splitting off teacher salaries from the rest of school finance, with only 15 per cent of the school

budget involved in what they called school finance, Briscoe and Nugent could solve the problem and not spend a great deal of money. That way they'd get the school boards, the PTA's, the superintendents, the administrators and all of those other groups out of their hair. Then when a separate bill for teacher salaries came up, the only ones down here to push for it would be the teachers themselves. That's the "divide-and-conquer" technique.

Marcello: I think if Governor Briscoe had had his way, according to the newspaper reports, any increase in teacher salaries would have been handled by the local districts themselves.

Hale: That's true. Governor Briscoe started out with the idea that we were not going to put any more state money into teacher salaries. That was Clayton's idea in sustaining the Nugent point of order to my amendment to put salaries back into the school finance bill.

Marcello: Okay, now you mentioned that the original point of contention was combining teacher salaries with public school finance. What happens at this point?

Hale: Well, the speaker appoints all the committees. He appointed the Education Committee, and he appointed an Education Committee that would go along with his ideas. So the Education Committee reported a school finance bill which did not have anything in it on teacher salaries. It spoke to all facets of public school

finance other than salaries of the professional personnel. Governor Briscoe submitted school finance as an emergency measure; he enumerated what he wanted in the bill and did not include teacher salaries. So the committee reported out a bill with no teacher salaries in it and with a statement that at the proper time they would report another bill which would speak to teacher salaries.

Marcello: Now, you know, as you move along with that public school finance bill, it can almost be blocked into several categories. I suppose it depends upon one's emphasis as to what he would favor in each category. For example, presently the state puts about 75 per cent into the minimum foundation program. Now Governor Briscoe wanted this raised to, I think, 90 per cent. Speaker Clayton's bill ultimately saw the state's contribution going to 100 per cent. What were your particular feelings along this line concerning the state's contribution to the minimum foundation program?

Hale: Let me rephrase your question for you. I don't think you stated the question quite accurately. What you're talking about is the state-local ratio in funding the operational costs of our public school system. Back as long ago as 1953 and 1955, when Allan Shivers was Governor of Texas, he worked hard and long to establish a state-local ratio on public school operations of 80-20, that is, finance 20 per cent from local funds and

80 per cent from state funds. That ratio has been relatively undisturbed in the intervening twenty-odd years since Allan Shivers was Governor.

This time the Education Committee of the House, during the interim, conducted some hearings and made some studies under the leadership of Tom Massey. Representative Tom Massey of San Angelo, who is chairman of the House Education Committee, came up with the proposal that the state should take over 100 per cent financing of the operation of the public school system. I think Clayton gave only lip service to that idea. I don't think it was really Clayton's proposal, and as far as I know, he never did really push the idea too hard.

Briscoe expressed the idea that there should be more state participation and less local participation. The reasoning behind that, of course, is that all local funds are raised by ad valorem taxes on land. Clayton is unusually sensitive to ad valorem taxes on land; Briscoe is particularly sensitive to ad valorem taxes on land. They desperately want to get the tax burden on land lessened, and any way they can do it is desirable. The obvious way to do it in the field of school finance is for the state to take over the cost of operating the schools and freeing the ad valorem taxpayer in the local school district of that burden. So Briscoe and Clayton both have made common efforts toward the objective of increasing

state participation and thereby lessen the local ratio and the burden on the local school district.

Marcello: How do you feel on this particular subject?

Hale: I was here when Governor Shivers was making his fight for 80-20. I shared his feeling--and still do--that there should be a certain portion of the cost borne by the local school district if for no other reason than to force financial responsibility on local school boards. If the state pays 100 per cent of the cost of operating the local school system, there is absolutely no fiscal restraint on a local school board. They're going to spend as much money as they can if they don't have to levy taxes to pick up the tab. As long as the state will hand them money on a silver platter, they'll spend it . . . perhaps wisely and perhaps not so wisely.

Marcello: Now, I think there was also a connection or an association between 100 per cent state financing and a lowering of property taxes. The two went hand-in-hand, did they not? I think in the Clayton bill, if the state did agree to finance 90 or 100 per cent of the total cost, then local districts would be required to lower taxes, isn't that correct?

Hale: In the original Clayton bill, there was a requirement that the increased state participation be reflected at the local level by a corresponding reduction in tax collections under their ad valorem tax system. But that requires a bit of

explanation. What Clayton wanted to do was have the state pick up a greater amount of this tax burden, not in terms of the ratio but in terms of dollars. The ratio is misleading, because nowhere in the statute does it say that there's an 80-20 ratio; it just works out that way.

Under the minimum foundation program, each district is guaranteed a certain level of operations. What can be raised by local taxes is determined under a very complicated formula. The state picks up the difference between what can be raised locally and what is needed to finance a minimum level of operation of the educational system.

We changed the formula two years ago from a very complicated economic index to a property value system. That's what's really stirred up the fight this time. The basis for determining the contribution of the local district is what's called a local fund assignment. That's determined on a state-wide basis. Local districts are required to raise "X" number of dollars toward financing a public school program. The amount of the local fund assignment is apportioned on a formula back to the individual school districts. In its local budget, each district determines how much it's going to cost to operate its system. They are required to raise locally the amount of their local fund assignment. Then the difference between their local fund assignment and what the total cost of operating their

school system is estimated to be is paid by the state.

It's a complicated system, and yet it's worked fairly well. I feel that the state has moved in the direction of taking over more and more of this responsibility, and yet I would never vote for the state to take it over in its entirety unless we also take over complete control of the local school system. That would be a violation of one of the real "sacred cows" of Texas politics, that is, you must have local control of your school systems. Well, you haven't had local control of your school system since the federal courts got in the picture. Anyway, it's still one of the "sacred cows" of Texas politics.

Marcello: When we get into this area that we've been pursuing, one also gets into the problem of the market value of land versus the productive value of land. Then, I suppose, we can go one step farther and talk about single family dwellings when it comes to urban areas. What are your feelings in this particular area?

Hale: I have made a number of talks in the past few months in which I pointed out to various groups that the battleground in this session of the Legislature is not school finance but ad valorem taxation. There is a school of thought in the political arena which contends that open-space land, farm land, ranch land--agricultural uses--is being taxed unfairly. There's another, and

larger, I think, school of thought which contends that open-space land is not bearing its fair share of the taxes when compared to the urban homeowner, who with a very small piece of land on which he's built a home, has to pay a rather exorbitant tax. So one of the battlegrounds of this session--in fact, one of the battlegrounds of the whole school finance fight of the last six years--has been "how do you value land for taxation?"

The battle lines have formed between two major theories of valuation. One is the market value approach. What will the land sell for? That's its value. You determine value on the basis of the theoretical sales price.

The second approach is agricultural use value, a shadowy concept based on productivity. You value the land on the basis of the income it will produce, not on the basis of what it would sell for if put on the market and sold.

As Texas becomes more and more urbanized, the price of land near a growing urban area escalates geometrically. Speculators come in and buy the land, thinking, "If I buy land close to a developing area, soon it will be right for subdivision purposes, and I can make a lot of money on it." Such speculation has caused the price of land to escalate in and near the urban areas out of all proportion to its productivity value. That is what has created the controversy.

We put an amendment in the Constitution of Texas a few years ago in an attempt to solve this problem--and it is a problem--whereby we permit land to be valued on a productivity basis if certain basic criteria are met. I'm not sure that I can recall offhand all of those criteria. One was that the owner of the land had to earn more than 50 per cent of his total income in any one year from farming and ranching operations. The idea was to give a tax break to the legitimate farmer or rancher who is actually working the soil and producing from it and not to give that same tax break to the absentee owner who is buying for speculative purposes and holding the land and hoping to sell it for a big profit one of these days.

But that's the controversy--how do you treat those two areas? Certainly, land adjacent to a big city is not worth what the speculators are paying for it in terms of tax value. Yet, there's a lot of land in Texas that's worth a lot of money that's on the tax roles for negligible amounts. Hopefully, we could come up with some formula that would reconcile those differing situations and achieve some degree of justice in the tax system. But I'm becoming more and more pessimistic, after six years of working on it, that we'll ever attain justice in that area.

Marcello: Another problem that seems to come into every public school finance bill is the matter of equalization. It seems as though

that comes up every session . . . at least for the past three sessions. How do we solve this problem?

Hale: The ideal way to solve it--and I don't necessarily subscribe to the ideal way--would be for the state to take over 100 per cent of the financing of the public school system, take over the taxing capacity of the independent school districts, funnel all of that money into the state treasury, and then apportion it out to the individual school districts on the basis of either scholastic population or average daily attendance or some basic formula which would feed the money back to the school districts in proportion to their need. That would give you equal educational opportunity from a financial standpoint. I don't know that we'll ever reach that in equality in Texas. In an attempt to meet the challenge of the federal court in the Rodriguez case, which generated this whole controversy, what the Legislature has tried to do is to funnel additional funds to local school districts, called equalization funds, in inverse proportion to their capacity to raise money locally to finance their public school system. At the present time, we're putting fifty million dollars a year, one hundred million dollars each biennium, into equalization funds. The school districts qualify for those funds inversely in proportion to their capacity to raise their own money. Now the battleground for the last four years, and this year, has been "how much state money do we

put into these equalization funds" as opposed to "how much money do we put into other areas where the equalizing factor is not present."

Marcello: Now where do you stand on this particular issue? You know, liberals, for example, have claimed that there has not been enough money put into the equalization aspects of the public school finance bill.

Hale: I have, in the past six years, tended to side with that area of thinking. I have introduced legislation and have worked for legislation to try to equalize educational opportunities in Texas. I think it's really more important that we do that than it is that we solve the dilemma of the ad valorem taxes. I don't think that our ad valorem taxes are really that far out of hand yet. We might come to that one of these days. But we do need more money in equalization funds than we've been getting. We need to make it possible for those less affluent districts to offer a better educational program than they've been capable of offering in the past.

Marcello: Now, ultimately, the public school finance bill ended up in conference committee, and, as we know, the Legislature has had to be called back into a special session in order to deal with this problem. You were not a member of the Education Committee in the House, but yet Speaker Clayton appointed you as an ex officio member of the committee which is debating

the present bill which is now in committee in the House. How did you get on this committee?

Hale: During the regular session, I sponsored a bill on public school finance which was endorsed and recommended by the Texas State Teachers Association. Mr. Kaster, Representative Kaster from El Paso, sponsored a bill on public school finance in the regular session which was recommended by the governor's office. Mr. Atkinson sponsored a bill in the regular session, Representative Atkinson, that was recommended by, I believe, the administrators, the Texas Association of School Administrators. There was another bill that the school boards sponsored . . . maybe Atkinson sponsored the school board bill, I'm not sure. There were about three or four different organizations who recommended varying versions of a school finance bill. Each of those bills had a sponsor.

When the school finance bill went to conference committee during the regular session of the Legislature, the speaker tried to see that each of those bills were represented on the conference committee. Mr. Kaster was put on the conference committee because he had sponsored the governor's bill. I assume I was put on the conference committee because I had sponsored the Texas State Teachers Association bill. The other three conferees were members of the Education Committee:

Mr. Nugent; Mr. Massey, who was chairman of the Education Committee; and Mr. Atkinson, who was on the committee. When it came time to appoint the conference committee, the speaker, I'm sure, put me on the conference committee because I was one of the sponsors of a major bill; Mr. Kaster was on for that reason, also. He and I were the two members on the conference committee who were not members of the Public Education Committee in the House.

When the special session became obvious and the House Committee on Education decided to hold public hearings, the speaker felt it important that Mr. Kaster and I participate in those hearings since we had been sponsors in the House during the regular session of major school legislation and since he had put us on the five-member conference committee on the school finance bill. So he said, "I'll just name you as ex officio members of the Public Education Committee so that you can participate in the hearings and discussions leading up to the first called session." That's what he did.

Marcello: And it should be mentioned that as ex officio members, you may take part in the debate but cannot vote, isn't that correct?

Hale: That's true. We were full committee members and participated in all the committee deliberations and activities other than the right to vote. We questioned witnesses; we were able to make suggestions; we entered into the discussions; we attended

the meetings; we debated the issues. But when it finally came time to call the roll and vote on the issues, Mr. Kaster and I could not vote.

Marcello: Getting back to the problem of school equalization once again, is there a possibility that this will find its way into the courts one more time?

Hale: In the Rodriguez case, the United States Supreme Court upheld the Texas system of financing public school education on a divided vote, 5-4. That was misleading, I assume, in a sense, because even in the majority opinion, the court pointed out that there were monumental inequities in the Texas system of financing public school education. But at least at that time, the court felt that the issues should be resolved in the forum of the Texas Legislature rather than in the forum of the federal courts, the implication being that if the Texas Legislature did not address these problems and work out some equitable solution to these problems, the ruling of the court might be different at a later date. So I think the possibility of later federal court action is a shadow that hangs over our head in this entire controversy.

Marcello: Is there anything else that we have to say about the school finance bill before we move on to another topic?

Hale: Well, at the time you're taping this interview, of course, we are in a special session here in Austin, and school finance is

the topic on which this special session was called. I think it's significant--at least from my personal point of view, it's significant--that the recommendation of the governor and the recommendation of the speaker at this special session is in accord with the posture that I have taken, and the Texas State Teachers Association has taken, from the very start: you cannot separate the issue of public school finance from the issue of teacher salaries. The thrust and the effort to try to separate those two has completely disappeared from the political spectrum in Texas since the regular session. In the governor's message and in his call for this special session, he included teacher salaries along with school finance. The speaker's bill that I co-sponsored in the special session includes teacher salaries; the Senate bill includes teacher salaries. Every piece of legislation that's been introduced this time on school finance includes the item of teacher salaries. So those of us who argued that point and fought that battle in the regular session feel a certain degree of satisfaction in thinking that we had won that phase of the battle before the opening gun was ever fired in the special session.

Marcello: Let's move to another topic that's closely related to public finance. What I'm referring to here is the activities of Representative Peveto in trying to reform or to revise the property tax system in Texas. How much did you get into this particular

area during the past session?

Hale: I was not involved in that at all other than just as a voting member of the Legislature.

Marcello: How do you feel about the recommendations put forward by the Peveto committee? This is a special committee, of course.

Hale: I voted for the Peveto bill in the regular session. I feel that we do need some basic reform at the local level in the tax assessing area, and I felt that the Peveto bill was a reasonable approach to that problem.

Marcello: Peveto has evidently come on as a rather competent, capable, and hard-working representative, has he not?

Hale: Mr. Peveto is a very capable and very able member of the Legislature. He has concentrated his efforts in this one area and has achieved some degree of expertise, and I commend him for it.

Marcello: Another issue that came up during this legislative session, and, here again, I think it was closely related to the so-called surplus and then also to the highway appropriations bill . . . I'm referring to the proposal to decrease the sales tax on utility bills. Now that, of course, failed. It passed the House, but I think it failed in the Senate. How did you feel about the 1 per cent decrease in the sales tax on utility bills?

Hale: I voted for it, although I felt that it was a gesture in futility, I suppose. There's really not that much money involved

as far as the individual taxpayer is concerned. The tax that was involved is ridiculously small to the individual, and yet it would have deprived the state of quite a sum of money. However, I voted for it, so I guess I shouldn't be too critical.

Marcello: I think we could talk about many other areas of legislative activity. Is there any one in particular that you would like to talk about at this particular point? How about any of your own personal legislation, that is, legislation you sponsored? Is there anything that you would like to get into the record concerning that aspect?

Hale: I think we've talked mostly about education legislation, and I spent a great deal of my time on education legislation. I was involved in several floor fights during the last session, either for or against legislation, and with, I think, the usual degree of success and failure as far as batting average is concerned. I don't know that any of those would be of any great historical consequence.

I would point out, in a general sort of way, that there were some things in this last session of the Legislature that I didn't particularly like and that I am apprehensive about. I think that we have had a backlash on reform . . . the pendulum has swung back from the reform period following Gus Mutscher's resignation and his indictment and later conviction. As a result, there was a big reform movement which swept Texas

in 1973 and to some extent carried over into 1975. I think the backlash of that was seen this last session.

I think the Clayton administration in the House has drifted back into a great many of the evils of the Mutscher regime. I think in this session of the Legislature, many of the old habits have come back on us again, where everything is pinpointed and spotlighted in the speaker's office; and unless you had a green light from the speaker, why, you were in trouble with your legislation.

It seems to point up again the evil of the speaker of the House serving too long. I have a feeling that a regular turnover in the speaker's office is a desirable characteristic. That's one of the trends that I saw this last time.

I think that you saw, also, in the entire state leadership during this session of the Legislature a tendency to let the ship of state drift with the current rather than trying to master the situation and make the determination. Governor Briscoe, I think, demonstrated much more vigorous leadership than he ever has. In spite of that, I think that many members of the Legislature felt that we were not getting any real leadership toward solving the major problems of state government. I think Governor Briscoe's biggest handicap this time was not his shyness and his reluctance to exercise leadership but probably the limited horizons which he saw as the area of Texas governmental action.

That in a sense was partly responsible for an obvious lack of leadership in the governor's office.

There's no way you can characterize this session of the Legislature other than to say that it was rather mediocre and rather inept in its approach to the problems of government. You have to lay that at the feet of the leadership ultimately, because they are the ones that set the tone for the Legislature and determine the flavor of the product which is going to emerge from the deliberations of any given legislative session.

Marcello: As we've talked here this evening, I more or less get the impression that this hasn't necessarily been a happy legislative session for you. Where does DeWitt Hale go from here?

Hale: I'm not sure that I'm going anywhere (chuckle). I am serving my thirteenth term in the House of Representatives, and that is the record, incidentally. The record tenure in the House is thirteen terms set by Representative Menton Murray from Harlingen before he retired about four years ago. Representative Dick Slack from Pecos is serving his thirteenth term this session; I'm serving my thirteenth. So that if Representative Slack and I both live to the end of our present terms, we will tie Representative Murray for longest tenure in the House of Representatives. That, I suppose, is the tip-off that it's time for Representative Slack and me to get out of this place.

You're right in your appraisal of my reaction to the last

session. I have not enjoyed the last session of the Legislature nearly as much as I have prior sessions in which I've served. In my own thinking, I have analyzed that in terms of a message telling me it's time to get out. Darrell Royal recently resigned as head football coach at the University of Texas with the explanation that when it ceased to be fun, it was time to quit, and football had ceased to be fun for him. If that analogy can be carried over into the political arena, then I suppose it's time for me to get out, since it's sort of ceased to be fun to serve in the Legislature.

So I'm not at all sure. This is probably my last term in the Legislature. I'm seriously entertaining the idea of not running again. I know that's of no consequence to anybody in Texas except my wife and my family and me, but it is in a limited sense, I suppose, a big decision since I've served here so long. I don't regret my tenure in the Legislature; I've enjoyed most of it. Yet, I feel that maybe the time has come for me to get out.

That's been borne out to some extent this last session by my feeling that I didn't have as good a rapport with the younger members of the Legislature as I've generally had in the past. Perhaps part of that is the generation gap, and maybe it's time for me to pass the torch on to a new generation of Texans and let them solve their problems in the ways of the

new generation.

Marcello: What in particular about the new legislators haven't you been pleased with?

Hale: Well, for one thing, I think that most of the newer members of the Legislature in the last four years have tended to be more and more liberal. I was known as a liberal when I first came to the Legislature, and today I'm considered a very conservative member. As I look back on it, I'm not so sure that I have changed that much. I haven't analyzed it carefully, but I strongly suspect that what's happened is that I have kept a fairly static posture politically, and the political spectrum of the entire state has changed by becoming more and more liberal. By me holding a firm position, it's pushed me more and more to the right of the political spectrum and into the more conservative areas.

Another thing that grieves me greatly is that within the last three or four years, matters of sex and race have become very predominant in legislative activities. Up until then, I was never even aware of whether the man was black or white or brown or whether it was a male or a female. I thought of everybody as just human beings and treated them that way. Now, we have suddenly become super-conscious of minority groups and minorities. If you do something that favors an Anglo, you're discriminating. It seems that everything you do is measured in

terms of racism. That's unpleasant to me and, I think, a horrible development. I think it's tending to polarize our communities and our state.

I think a lot of the fault for that lies in our federal court system where we have a group of men making political decisions who are not responsible to the people of the country by reason of their appointed capacity. They're serving for life. They lose touch with reality, yet they're dictating and imposing their personal views upon the populus by judicial fiat, a practice which I think is disastrous for the country.

So all of these things have gone into giving me a pessimistic viewpoint, I suppose, on the political picture. That, too, tells me that maybe it's time to get out when I reach the point of thinking that way.

Marcello: That's probably a very good way of expressing it. I would assume that a lot of people might say that "Well, DeWitt Hale is over-reacting to the article in Texas Monthly," or they might also say that "DeWitt Hale is expressing sour grapes over not having been appointed as chairman of the Judiciary Committee, which is a committee that he's always enjoyed serving on." But it's not that at all, and I'm glad that you've made these comments as a part of the record.

Hale: Well, I was bumped off as chairman of the Judiciary Committee when Mr. Clayton became speaker, because I was not a supporter

of Mr. Clayton when he was running for speaker. That's the name of the game in politics. Mr. Clayton wanted to appoint his close associates and supporters to the key positions of leadership in the House, and I don't quarrel with that concept at all. As a result, I lost the chairmanship of the Judiciary Committee, but I would not deny the fact that I was disappointed in losing the chairmanship.

However, two years ago Mr. Clayton was very kind to me; I have no quarrel with it. In a sense, it may have been a backhanded compliment. When the impeachment of Judge Carrillo came to the forefront, he named me chairman of the select committee to handle the impeachment of Judge Carrillo. It was a task that nobody wanted; I didn't want it either. Yet, in a sense, it was, as I said, a backhanded compliment, because it required a certain degree of skill and ability to take a very sticky political problem of that nature and handle it successfully. Most of my personal political friends in Corpus advised me strongly against accepting the chairmanship of that committee, and I went against their wishes and desires when I took it. Yet, I think that I came out with all pluses on my side and no minuses that I'm aware of from a political standpoint. I am proud of the way that I was able to handle that problem. And I'm proud of the results we achieved.

Then in this session of the Legislature, Mr. Clayton indicated

to me that he wanted to know what I wanted in the way of a role in his administration. I again told him that my number one choice would be chairman of the Judiciary Committee, and he indicated that he could not give me that. I said, "If I can't get that, my second choice would be chairman of the House General Investigating Committee," which is more of an interim committee, although it can function at any time. He did give me that; he made me chairman of the House General Investigating Committee. So I feel that he's treated me pretty well. I have no quarrel with Mr. Clayton as far as the way he's treated me, since I didn't support him in his initial campaign for speaker.

Marcello: Mr. Hale, is there anything else that you think we need to get as part of the record before we close this particular interview?

Hale: Well, I don't know. There's so many things that could be said, and it's hard to recall them all. I think you've conducted a very good interview at this point. The timing of this interview is unfortunate in two respects. One, we are in the middle of a special session, and neither of us know, really, the outcome of the special session at this point. Secondly, there has been a matter closely akin to the Carrillo impeachment which has reared its ugly head during this session of the Legislature: the attempted removal of Don Yarbrough as associate justice

of the Supreme Court of Texas. There is pending in the House and Senate at this time resolutions of address seeking his removal. There have been introduced pursuant to Article 15, Section 8, of the Texas Constitution, which provides that for misconduct or operation of an office in a way that's incompatible with the duties and responsibilities of that office makes the occupant thereof subject to removal by the governor of Texas on address, or petition, in effect, of two-thirds of each house of the Legislature. That's the procedure that's being invoked against Associate Justice Don Yarbrough during this session. The House has scheduled hearings . . . the House and Senate meeting jointly have scheduled hearings on that to commence on Friday, July 15th, and this interview is taking place on Tuesday, July 12th. So three days from the date of this interview, the House and the Senate will begin hearing testimony on Associate Justice Don Yarbrough to determine whether or not we should vote to request the governor, to petition the governor, or address the governor, to remove him as associate justice. Possibly we could have had a more thorough interview had it been timed a few weeks later. But by the time this interview is typed, we will know the outcome. I do not know what my role will be other than as a member of the Legislature.

Marcello: Well, Mr. Hale, once more I want to thank you very much for having taken time to talk with me concerning your experiences

Hale
50

from the 65th Legislature. You've said a lot of very interesting and important and candid things. I'm sure that some day when you release this information that scholars are going to find it most valuable, and certainly it will expand our knowledge of the inner workings of state government.