

STATE BOARD OF ACCOUNTS: Tax Sale. County Purchasing. Right to make repairs during period of redemption.

May 23, 1944.

Opinion No. 51

Hon. Otto K. Jensen, State Examiner,
Department of Inspection and Supervision
of Public Offices,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter in which you ask the following questions:

"1. Can the county expend money from county revenue to make the needed repairs on buildings located on property bid in by the county auditor for the county as provided in Chapter 224, Acts 1941, after the bid is made by the auditor but prior to the issuance of the deed to the county?

"2. If your answer to the above is in the affirmative, repairs were made, later a deed was made to the county and on sale by the county not enough money was received from the sale price to pay all of the costs, including repairs, taxes, etc., should not county revenue be repaid the sums advanced for repairs before any money should be applied to taxes?"

Section 2 of Chapter 224 of the Acts of 1941 is an amendment of Section 260 of Chapter 59 of the Acts of 1919 and was in turn amended by Section 1 of Chapter 43 of the Acts of 1943 (64-2203, Burns' 1943 Replacement). The pertinent provisions of that act with regard to purchase at a tax sale by the county are as follows:

"* * * Whenever any real estate has been or shall hereafter be advertised and offered for sale for delinquent taxes, by the county treasurer, for any two (2) years or more, and no person shall have bid therefor a sum equal to the delinquent taxes thereon, then all of such real estate as remains unsold on the first Monday of December of any year during which such real estate shall have been so offered for sale, shall, by the

auditor of such county, on said Monday be bid in for such county for a sum equal to the amount of delinquent taxes, and costs thereon, such sum to include any subsequently accrued delinquent taxes and penalties but not to include liens for any improvement assessment against such real estate, and thereupon said county shall be entitled to and shall receive tax sale certificates and/or tax deeds in the same manner and with the same rights as any other purchaser at such sale except as herein otherwise provided. *Such real estate shall be held by such county in trust for all of the tax levying bodies that have levied and certified such taxes as their interest shall appear:* Provided, That when the same is bid in by the county auditor no money shall be paid by the county or other tax levying and tax certifying bodies for said purchase but each of the tax levying and tax certifying bodies having any interest in said general taxes for which said real estate is sold shall be charged with the full amount of all the said delinquent and general taxes due said tax levying and tax certifying bodies, as its just share of the purchase-price: * * *." (Emphasis ours.)

The fact that the property so purchased does not become county property except in so far as the county may have taxes to recover, but is held in trust by the county for all of the tax levying bodies, in and of itself presents practical obstacles to the expenditure of money from county revenue upon property which it actually holds in trust. Furthermore, between the time the purchase is made by the county and deed issues there is always the possibility of redemption by the taxpayer. No provision is made in our redemption statutes for the payment by the party redeeming, of funds advanced by the county for repairs. The redemption statute in effect at the time this sale was made (Section 3 of Chapter 224 of the Acts of 1941) provides as follows:

"If redeemed within six (6) months from the Monday on which such auditor shall have bid in such real estate, such owner or redemptioner shall pay to the county treasurer for use of such tax levying bodies in proportion as their interest may appear, the full

amount of the sum for which said land was so bid in, together with costs and five percentum of such sum in addition; if redeemed after six (6) months and within one (1) year, such owner or redemptioner shall pay in like manner the full amount of the sum for which said real estate was so bid in, together with costs and seven percentum of such sum in addition, together with all taxes, interest and penalties that have subsequently accrued on such lands and were not included in such sums."

It seems to me that to justify such an expenditure there should be a very clear showing of statutory authority for it, before the county would have that authority.

It is well settled that "* * * the board of county commissioners have and can exercise the powers only as are expressly conferred on it by the constitution and the statutes of the state, or such powers as arise by necessary implication from those expressly granted, or such as are requisite to the performance of the duties which are imposed on it by law."

See:

Board of Commissioners of Vanderburgh County-v. Sanders, 218 Ind. 43 at 53.

It is equally well settled that no money can be paid out of the county treasury with certain statutory exceptions, unless there has been a previous appropriation therefor by the county council. Section 22 of Chapter 154 of the Acts of 1899, as amended by Section 1 of Chapter 110 of the Acts of 1935 (26-522, Burns' 1933) provides in part:

"* * * In all other instances, no warrant shall be drawn upon, or money paid out of, the county treasury, unless an appropriation by the county council therefor has been made for the calendar year in which the payment is made, and which appropriation remains unexhausted."

The exceptions mentioned in this act do not include any situation similar to that stated in your inquiry.

Section 25 of Chapter 154 of the Acts of 1899 (26-525, Burns' 1933), provides as follows:

"No board of county commissioners, officer, agent or employee of any county shall have power to bind the county by any contract or agreement, or in any other way, to any extent beyond the amount of money at the time already appropriated by ordinance for the purpose of the obligation attempted to be incurred, and all contracts and agreements, express or implied, and all obligations of any and every sort beyond such existing appropriation are declared to be absolutely void."

See: *Ness v. Board of Commissioners of the County of Marshall, et al*, 178 Ind. 221, in which the Court holds that no contract can be made by the county if no appropriation exists to support it.

Moreover, although ample authority is found in the books for appropriations to repair public buildings owned by the county (see Section 19, Chapter 154, Acts of 1899, 26-519, *Burns' 1933*), I find no authorization for expenditure of county funds to repair buildings upon property acquired through tax sale and prior to receipt of a deed. Consequently, in answer to your first question, I am of the opinion that even if the practical difficulties first mentioned could be surmounted, no valid appropriation could be made for such repair items, and in the absence thereof, of course the expenditure of county funds on a contract for such repair would be unlawful.

No opinion is expressed herein concerning the liability of the county in a suit for benefits received as a result of repairs made, but it should be borne in mind in considering such benefits that the county would not be the sole beneficiary since it merely holds the property in trust.

Since the answer to your first question is in the negative, the situation suggested in your second inquiry need not be considered.