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therefrom; however, such liniments, et cetera, in no case shall contain coca leaves;

3. That he did not know and could not by reasonable diligence ascertain that such prescribing, administering, dispensing or selling was for the purpose of satisfying addiction;

4. That such medicinal preparation, or liniment, ointment or other preparation susceptible for external use only, contains some other drug or drugs conferring upon it medical qualities other than those possessed by the narcotic drug alone.

5. That said preparation was prescribed, administered, dispensed and sold in good faith as a medicine, and not for the purposes of evading the provisions of said Act. Of course, the exemption provisions of Section 8 of the statute are not to be construed to limit the kind and quantity of any narcotic drug that may be so prescribed, administered, dispensed or sold to any person or for the use of any person or animal, when it is so prescribed, administered, dispensed or sold in compliance with other provisions of said Act.

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### OFFICIAL OPINION NO. 73

December 20, 1954

Hon. Frank T. Millis  
Commissioner of Revenue  
141 South Meridian Street  
Indianapolis, Indiana

Dear Mr. Millis:

I have your request for an Official Opinion, in which you ask the following questions relative to the administration of the Gross Income Tax Law:

“1. First, if a sheriff returns a warrant unsatisfied and the Department later receives payment for the warrant, should sheriff's damages be included in the sum collected by the Department of Revenue? If so, how should the amount represented by sheriffs' damages be disposed of and accounted for by the Department?

"2. Second, after the warrant is issued, does interest run on the full face of the warrant at the rate of 1% per month, does it run only on that part of the warrant represented by the tax at 1% per month, or should interest be calculated in some other manner?"

Section 13 (a) of the Gross Income Tax Act, as last amended by the Acts of 1951, Ch. 279, Sec. 2, as found in Burns' Indiana Statutes (1951 Repl.), Section 64-2613, provides, in part, for the issuance of a warrant for the collection of unpaid gross income tax as follows:

"(a) If any tax, penalties, or interest, or any proportion thereof, imposed by this act and demanded by the department be not paid within thirty (30) days after the same is found to be due and within the ten (10) days after the demand provided for in section 12 (a) of this act, the department shall issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person owing said tax, found within his county, for the payment of the amount thereof, *with damages to the amount of ten (10) per cent of the tax, in addition to the penalties imposed for failure to make a return, and in addition to the penalties imposed under section 11 of this act, and interest, and costs of executing the warrant \* \* \*.*"  
(Our emphasis)

Section 13 (a) further provides for the method by which the sheriff to whom the warrant is directed shall proceed in filing the warrant with the Clerk of the Circuit Court of his county, and the collection of the amount of the warrant. Such section provides as follows:

"\* \* \* Such officers shall be entitled to the same fees, to be collected in the same manner, as is now provided by law for like service. The sheriff shall also be entitled to retain for his services the amount of damages set forth in the warrant and as prescribed herein, *but only* when the *full* amount of tax and penalties set forth in the warrant has been collected *by him*

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and transmitted to the Department. \* \* \*” (Our emphasis)

It would appear from the wording of the above quotations from Section 13 (a) that the “damages” which are imposed by the terms thereof, are not “sheriff’s damages” as assumed by your question, but are “damages” imposed by the act which are due to the state, in addition to all other penalties and interest imposed under other sections of the act. It would appear, however, that the Legislature intended that the sheriff should “retain” for his services, in addition “to the same fees, to be collected in the same manner, as is now provided by law for like service,” the amount of “damages” set forth in the warrant, but only “when the full amount of tax and penalty set forth in the warrant has been collected *by him* and transmitted to the department.”

It is therefore my opinion that if the sheriff returns a warrant unsatisfied and the Department later receives payment for the warrant, the “damages,” which are a part of the warrant, should be collected by the Department of Revenue before the lien can be released.

The answer to the first part of your first question is “yes.”

It is further my opinion that the amount representing “damages” in the tax warrant may not be paid to the sheriff under circumstances set out in your question, but shall be disposed of and accounted for in the same manner as other penalties and interest otherwise provided by law.

It would appear that the collection of delinquent gross income tax would be made more effective if the sheriffs are assured of receiving the “damages” provided for in the act. This can be effectively done by following the statutory procedure. The sheriff is required by Section 13 (a) of the act:

“\* \* \* to return such warrant to the department and pay to it the money collected by virtue thereof, by time to be therein specified, not more than sixty (60) days from the date of the warrant. \* \* \*”

Section 13 (a) of the act further provides that:

“The warrant provided for herein shall be the sher-

iff's instrument of execution on the judgment and in case the execution and levy is not made within the 60 days provided, the department may issue an alias warrant in the same amounts which shall be served with like effect as the original warrant."

It would appear from the last above quotation from the act that the sheriff must make a return upon the warrant whether collected or not within a period of not more than sixty days as provided by the warrant, and that the department may issue an alias warrant which the sheriff may hold indefinitely for the collection of the delinquent tax, since the act does not put any time limitation on the alias warrant. If the sheriff were to follow the procedure outlined by the act, he would then be assured of receiving the "damages" for his services upon the complete collection of the warrant. In no instance, in which a warrant or alias warrant is in the hands of the sheriff for collection, should your Department accept the proceeds of such warrant except from the sheriff.

In reply to the second question of your letter, it is my opinion that the interest at the rate of 1% per month should be computed on the full face of the warrant. Section 13 (a) of the Gross Income Tax Act, *supra*, after providing for the issuance of the warrant and providing for the procedure of the sheriff and the filing of a copy of warrant with the Clerk of the Circuit Court, provides in part as follows:

"\* \* \* and thereupon the clerk shall enter in the judgment record, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in the appropriate columns, the amount of the tax or portion thereof, and damages, for which the warrant is issued, and the day when such copy is filed; and thereupon the *amount of such warrant* so docketed shall become a lien upon the title to and interest in real and personal property, including choses in action except negotiable instruments not past due, of the person against whom it is issued *in the same manner as a judgment* duly enrolled in the office of such clerk. Such judgment shall remain in full force and effect for a period of ten (10) years from the date of recording unless paid or satisfied prior to the expiration of said

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ten (10) years and shall bear interest at the rate provided for in section 11 of this act. \* \* \*” (Our emphasis)

And it is further provided in part:

“\* \* \* The department may issue to the clerk a satisfaction of lien in any case where it is shown that the full amount of judgment *plus interest accrued thereon* has been paid or where it is found that the assessment was in error *but in no other case shall the department release any portion or parcel of taxpayer's property affected by said judgment.* \* \* \*” (Our emphasis)

I believe that it is clear from the reading of the Act and specifically the above quoted portions of Section 13 (a), that after the delinquent tax has been determined and a warrant has been issued and filed that all the interest, penalties and damages become a part of the warrant and are made a part of the judgment constituting a lien upon the property of the taxpayer, and that the judgment shall bear interest as provided for in Section 11 of the Gross Income Tax Act, *supra*, which is at the rate of 1% per month.

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OFFICIAL OPINION NO. 74

December 20, 1954

Hon. John W. Van Ness, Senator  
Indiana General Assembly  
603 Franklin Street  
Valparaiso, Indiana

Dear Senator Van Ness:

This is in reply to your request for an Official Opinion, inquiring as to the following:

“Do municipal water departments in the State of Indiana come under the control of the Public Service Commission on matters pertaining to water main extensions?”