

OPINION 101

OFFICIAL OPINION NO. 101

November 5, 1953.

Mr. A. L. Fossler, Chairman,
State Board of Tax Commissioners,
301 State House,
Indianapolis, Indiana.

Dear Mr. Fossler:

I have your letter requesting my opinion which reads as follows:

“The State Board of Tax Commissioners would appreciate the receipt of an official opinion concerning the following question:

“Facts: In 1952 the State Board of Tax Commissioners notified the County Auditor to certify forthwith for review and assessment, the assessments made by the assessing officers of oil production or oil leases pursuant to Acts 1919, ch. 59, sec. 189, p. 198, as amended by Acts 1935, ch. 306, sec. 1, p. 1488 (11 B. A. S., 1951 Repl., pt. 2, § 64-1321). After notice and hearing the Board issued a ‘finding and determination as to the total assessment of all oil interests in the leases.’ A note directed that the valuation of ‘any other personal to be added.’ No allocation of royalty, overriding royalty and working interests in the leases was made by the State Board of Tax Commissioners. The Division of interests will be left to the local county officials on the basis of ownership of record on March 1, 1952.’ The local officials placed the assessments of various interests on the rolls as personal property. *The taxpayers petitioned the court for a restraining order to prevent the treasurer from collecting taxes thereon.*

“1. Under the provisions of Acts 1919, ch. 59, sec. 209, p. 198 as last amended by Acts 1949, ch. 138, sec. 1, p. 370 (11 B. A. S., 1951 Repl., pt. 2, § 64-1407) can the county auditor remove the assessments by certificate of error and have the assessments entered on the rolls as real estate pursuant to a request submitted to

and approved by the State Board of Tax Commissioners, thereby correcting the description from personal property to real estate?

"2. Is it required that a notice and hearing be given to the taxpayer before the above procedure is pursued?"

The statute granting the right to correct errors in tax duplicates is Section 209, Chapter 59 of the Acts of 1919, as amended, the same being Burns' Indiana Statutes Annotated (1951 Repl.), Section 64-1407 and reads in part as follows:

"The county auditor shall from time to time correct errors which may be discovered in the tax duplicate, either in the name of the owner, in the description of the property, or in mathematical calculation of tax properly to be charged, and he shall make such correction and add from time to time any such correction or additional or omitted assessment made by himself, by the county assessor or in the Indiana tax board; and when such correction is made after the tax duplicate shall have been delivered to the treasurer for collection, the auditor shall give a certificate of correction to the treasurer, who shall keep the same as his voucher or settlement with the auditor. After the adjournment of the county board of review no changes except for errors of the kinds above mentioned shall be made without the authorization of the Indiana tax board (state board of tax commissioners); and *said Indiana tax board is empowered*, at any time prior to the first Monday in November of the year following the assessment, *upon a verified application duly filed with it, to review and authorize the correction of any assessment, if such assessment complained of was made by the assessor or the Board of Review, without notice to the taxpayer, and without opportunity for the taxpayer to be heard thereon.*" (Emphasis supplied.)

It is to be noted that this section was amended in the years 1925, 1941, 1943 and 1949.

The original section, the same being Section 209 of Chapter 59 of the Acts of 1919, contained merely the first sentence of

OPINION 101

the portion of the section above quoted. The section at that time was limited to the action of the county auditor in correcting tax duplicates and in no way required or authorized any action on the part of the State Tax Board. Section 1 of Chapter 148 of the Acts of 1925 inserted the second sentence in the above quoted excerpt in practically its present form. The remainder of Section 64-1407 was added in 1925 but has been amended to its present form. The remainder of the Section not quoted above in its present form also pertains to various authorized actions on the part of the State Tax Board in correcting other types of errors in tax assessments. So what was originally an act authorizing the Auditor to correct errors in tax duplicates now authorizes corrections to be made in certain instances by the State Tax Board. In order to invoke the jurisdiction of the State Board in regard to a correction in a tax duplicate a verified application must be filed with the State Board after the adjournment of the County Board of Review and prior to the first Monday in November of the year following the assessment, and in addition the assessment must have been made by the assessor or the Board of Review without a notice to the taxpayer and without an opportunity for the taxpayer to be heard.

The meeting dates of the various County Boards of Review are determined by Chapter 103 of the Acts of 1943, same being Burns' Indiana Statutes Annotated (1951 Repl.), Sections 64-1202 and 64-1205. Although the meeting dates vary, County Boards of Review meet in the year in which assessments are made. The language "to the first Monday in November of the year following the assessment" found in Section 64-1407 has been construed by this office in a 1943 opinion (1943 O. A. G., page 254) to mean the first Monday in November in the year subsequent to the year in which the assessment was made. In that opinion the second sentence of the quoted portion of Section 64-1407 was construed and it was indicated that this portion of the Section related to applications by a taxpayer direct to the State Tax Board for relief by way of a correction in his tax duplicate on matters to which he was not given notice or an opportunity to be heard by the local assessing officers. The language used in that opinion is as follows:

“There are other considerations, which, it seems to me, point in the same direction, and that is the fact that the language seeks to give the taxpayer a measure of relief from an assessment which has been made without notice to him and without opportunity for him to be heard. If that is the purpose of the Act, and I think it clearly is, there would be only a very remote chance that such taxpayer would know of his increased assessment until taxpaying time in the year following the assessment.”

In considering the exercise of authority under this Section it is well to bear in mind that the State Tax Board is an agency of limited jurisdiction and for that reason is restricted and limited in its actions to the powers granted by statute. The general powers of the State Tax Board have been discussed in an Official Opinion of this office (1943 O. A. G., page 261) by the use of the following language beginning on page 262:

“* * * In other words, such a Board has no general jurisdiction. In this connection, I call your attention to the case of State Board of Tax Commissioners v. McDaniel, 199 Ind. 708, page 716, where the Court said:

“ ‘This board’ (referring to the State Board of Tax Commissioners) ‘is not one of general jurisdiction; its jurisdiction and powers conferred by statute are limited. Not only are the orders which it may make particularly described and limited, but the method of procedure which the board must pursue is plainly and unequivocally set forth in the law. Twice within recent years have the courts decided that the powers conferred upon the board are limited by the Statute’ (citing authorities).

“Continuing, the Court further said:

“ ‘* * * but it has also been decided by the courts that where the statute provides the procedure through which the board must proceed as a foundation for its orders, such prescribed procedure must be followed implicitly, and such procedure is a measure of the power given.’

OPINION 101

“See also State Board of Tax Commissioners v. Belt Railroad and Stock Yards Company, 191 Ind. 282, at page 285, where the Court said:

“The state board of tax commissioners is a body of special statutory powers and acts outside of its granted powers are absolutely void.’

“In this same case, the Court quotes from the case of Gray v. Foster, 46 Ind. App. 149, as follows:

“In Gray v. Foster, *supra*, the court stated the rule as follows: “The State Board of Tax Commissioners is a statutory board, and its power and authority are conferred and limited by the statute. * * * Where power is given it to do a certain thing in a certain manner, the manner prescribed is the measure of power given.”’”

Again the general powers of the State Tax Board were discussed in an Official Opinion of this office (1945 O. A. G., page 116, No. 25, beginning on page 118) as follows:

“* * * Like all administrative boards of the state, the State Board of Tax Commissioners has only such powers as are specifically delegated to it by law.

“Cody v. Board (1932), 204 Ind. 87, 91;

“State Board of Tax Comm. v. McDaniel (1927), 199 Ind. 708, 716.

“The State Board of Tax Commissioners is a statutory board, and its power and authority are conferred and limited by the statute * * *.

“Where power is given to it to do a certain thing in a certain manner, the manner prescribed is the measure of the power given * * *.

“Gray v. Foster (1910), 46 Ind. App. 149, 155.

“See also:

“Doyle v. Lafayette Savings Bank (1923), 81 Ind. App. 177.

1953 O. A. G.

“The board cannot exercise its powers to a greater or less extent than is authorized by statute.

“Taylor v. Patton (1902), 160 Ind. 4, 7.

“The statutory authority of a state administrative agency to require the performance of an act by an individual must be specifically conferred by law.

“C. & E. I. R. R. Co. v. Public Serv. Comm. (1943), 221 Ind. 592, 594.”

Therefore, in accordance with the above quoted statutes, opinions and case authority, the State Board of Tax Commissioners can review and authorize the correction of errors in tax duplicates only upon an application being filed in accordance with the statute.

It is therefore my opinion:

1. Your question involves an error in the description of property which authorizes the Auditor to give a certificate of correction to the Treasurer. Where the Board of Review has adjourned, authorization of the State Board of Tax Commissioners is required.

2. Under the procedure as outlined in the first answer, no notice or hearing would be required.

OFFICIAL OPINION NO. 102

November 6, 1953.

Mr. Robert M. Reel, Executive Secy.,
Indiana Real Estate Commission,
1433 N. Meridian Street, Suite 208,
Indianapolis 2, Indiana.

Dear Mr. Reel:

This is in reply to your request of October 27, 1953 for an official opinion as to the following:

“Would there be any conflict regarding the status of a member of the Real Estate Commission as such if