

“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.

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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

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that member were at the same time serving as a Jury Commissioner in a local county Circuit Court?"

I believe that such a conflict does exist which would prohibit a Jury Commissioner from serving as a member of the Real Estate Commission for two reasons.

Section 1 of Chapter 44 of the Acts of the General Assembly of 1949, as found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 63-2401 provides in part as follows:

"No person shall act as a member of the commission while holding any other elective or appointive office either State or Federal."

The Honorable Judge Jordan of the Indiana Supreme Court in the case of State v. Sutherland (1905), 165 Ind. 339, 351, 75 N. E. 642 said:

"It is further asserted that a jury commissioner under the law of this State is not an officer, and that therefore his acts are not protected by the *de factor* doctrine. It will be observed that by the provisions of § 1449, *supra*, jury commissioners are required to take an official oath that they will honestly perform their duties during 'the term of office.' Section 1456, *supra*, declares that any person appointed a jury commissioner who shall 'fail to take upon himself said office,' etc., shall be deemed guilty of contempt of court, etc. These provisions, and others of the statute in question, conclusively show that the legislature in the enactment thereof intended to and did create a public office."

Therefore it is my opinion that the holding of the office of Jury Commissioner would be a direct violation of Chapter 44 of the Acts of the General Assembly of 1949, *supra*.

It is further my opinion that it is in violation of Section 1 of Article 3 of the Indiana Constitution which is as follows:

"The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial; and no person, charged with official duties under one of these departments, shall exercise any of the functions

of another, except as in this Constitution expressly provided.”

This section was construed by the Honorable Judge Starr in the case of *State ex rel. Black v. Burch* (1948), 226 Ind. 445, 80 N. E. (2d) 294, 302, in which it was said:

“In view of the fact that it is obvious that the purpose of all these separation of powers provisions of Federal and State Constitutions is to rid each of the separate departments of government from any control or influence by either of the other departments, and that this object can be obtained only if § 1 of Art. 3 of the Indiana Constitution is read exactly as it is written, we are constrained to follow the New York and Louisiana cases above cited. If persons charged with official duties in one department may be employed to perform duties, official or otherwise, in another department the door is opened to influence and control by the employing department. We also think that these two cases are logical in holding that an employee of an officer, even though he be performing a duty not involving the exercise of sovereignty, may be and is, executing one of the functions of that public office, and this applies to the cases before us.”

The members of the Real Estate Commission are appointed by the Governor and are embodied in the executive branch of government. (Chapter 44, Acts of the General Assembly of 1949, *supra*.) A Jury Commissioner on the other hand is appointed by the Judge of the Circuit Court and as such is exercising a function of the Judicial branch of government. (Chapter 69, Acts of the General Assembly of 1881.) Therefore, if a Jury Commissioner was acting as a member of the Indiana Real Estate Commission, he would be exercising the functions of two departments of government, to-wit: Executive and Judicial and therefore he would be exercising such functions in violation of Section 1 of Article 3 of the Indiana Constitution, *supra*, as considered by said case, *State ex rel. Black v. Burch, supra*.

It is therefore my opinion that a member of the Indiana Real Estate Commission could not at the same time serve as a Jury Commissioner in a local county Circuit Court.