OPINION 87

OFFICIAL OPINION NO. 87

September 21, 1949.

Honorable James M. Propst,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. Propst:

This is in reply to your letter of August 30, 1949 requesting an official opinion.

You state that you have been requested by the Indiana State Teacher's College to sell three buildings, two of brick and one of frame construction. That it is estimated that it will cost approximately $50,000 over and above that which the State can expect to receive from the sale to raze and remove the brick buildings.

You call my attention to Section 49-1723 and 1724, Burns' Indiana Statutes, same being the Acts of 1941, Chapter 156, page 480 wherein the Auditor of State is authorized to sell any and all tangible property, other than real estate, including equipment, materials and supplies that may be reported to him by the governing authorities of any department, institution or agency of the State that such property in their charge as has become obsolete or for any other cause, has ceased to be needed for use. You likewise call my attention to the Financial Reorganization Act of 1947, Acts of 1947, Chapter 279, Page 1138, same being Burns' 60-1801 to 1835. Particularly do you call my attention to Section 12 of said Act which reads as follows:

"SEC. 12. (a) All sales of property belonging to the State, excepting property on which allowance is made on another purchase, shall be conducted by the Director of Public Works and Supply and shall be based on competitive bids and shall be made to the highest responsible bidder, provided, such property shall be sold at public sale after notice of sale is given by publication of the time, place and terms thereof, in two newspapers of opposite politics and of general circulation, printed and published in the county where
such property is located, which publication shall be made at least ten days before the date of such sale. If only one of said political parties is represented by a newspaper of general circulation published in such county, then such notice shall be published in such newspaper, and in any other newspaper of general circulation published in such county, and if there be but one newspaper published in said county, publication therein shall be sufficient. All such sales shall be made for cash. The proceeds of any sale shall be deposited in the state treasury and credited to the fund from which the property was purchased. This section shall apply to the sale of property of or under the management or control of the State Fair Board."

You ask whether or not you as the Auditor of State are required to comply with the request of the Indiana State Teacher's College to sell the three aforementioned buildings which the college has declared to be obsolete and of no further use or whether or not the duty now as a result of the Financial Reorganization Act of 1947 is the responsibility of the Director of Public Works and Supply.

The Acts of 1947 supra contain a repealing clause same being Section 38 of the Acts and reads as follows:

"SEC. 38. All laws or parts of laws in conflict herewith are repealed. The provisions of this Act shall supersede the provisions of any general or special Act or part of Act in conflict herewith, passed at this session of the General Assembly, regardless of whether such Act or Acts were passed before or after the effective date of this Act."

Section 1 of the Acts of 1947 same being Burns' 60-1801 provides:

"* * * The provisions of this act shall apply to all agencies of the state. As used in this act the term 'agencies of the state,' 'agency,' or 'agencies' shall mean and include every officer, board, commission, department, division, bureau, committee, employee and other instrumentality of the state; * * * but except-"
ing, unless specifically included, military officers and military and armory boards of the state and the state fair board, state Supreme and Appellate Courts and state colleges and universities supported in whole or in part by state funds and * * *.”

It is to be noted that under Section 12 of the Acts of 1947 supra the property of or under the management or control of the State Fair Board is specifically included and is the only one of those excluded under Section 1 of the Act. It is clear therefore that the Financial Reorganization Act of 1947 has no application to the sales of property belonging to the Indiana State Teacher’s College.

The duty therefore of selling obsolete property in so far as those excluded under Section 1 of the Acts of 1947 still evolves upon the Auditor of State.

It is therefore my opinion that the duty and power to sell obsolete property of the Indiana State Teacher’s College is with the Auditor.

Your problem however is not hereby solved. Further problems present themselves.

The foregoing two statutes speak of personal property. Are these buildings real or personal property? You mention in your letter that two frame buildings were sold by the Auditor last year and that the then Attorney General O. K.’d same. No doubt the then sale called for the purchaser to raze the buildings at his own expense. Strictly speaking these buildings are real estate. But I believe if one is willing to buy the buildings—raze same at his own expense, the statute is broad enough for the Auditor of State to enter into such a contract.

You state in your letter that the estimated expense for razing these buildings amounts to $50,000 over and above the amount that it is estimated the sale will bring. This being a fact, then authority from the Legislature will have to be obtained to raze these buildings as well as an appropriation to defray the expense thereof.

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