

## OFFICIAL OPINION NO. 27

May 16, 1947.

Mr. C. E. Ruston, State Examiner,  
State Board of Accounts,  
Room 304, State House,  
Indianapolis 4, Indiana.

Dear Sir:

Receipt is acknowledged of your letter of April 9th requesting my official opinion as follows:

“Chapter 224, Acts of 1941 provided a time of one year and a method of redemption from tax sales in cases where the county became the enforced purchaser. The method was:

“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 \* \* \*, the full amount of the sum for which said land was 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 bid in, together with costs and seven percentum of such sum in addition, together with taxes, interest and penalties that have accrued on such lands and were not included in such sums.’

“The Legislature of 1943 enacted Chapter 137, Acts of 1943, which amended the section (262) pertaining to redemptions by owners or other persons having an interest in the property bid in by the county. This law added a provision whereby the final date for redemption of real estate bid in by the county on the first Monday in December, 1942 could be redeemed at any time until April 15, 1945 by the redemptioner paying to the county treasurer the full amount of the bid of the county, together with costs and 10% of such sum in addition.

“Before the date of April 15, 1945 had arrived, Chapter 322, Acts of 1945 had become law. Chapter

322, Acts of 1945 was not an amendment of former laws on the subject of redemptions, but it nevertheless established the time and manner in which redemptions could be made where lands were bid in or title acquired and not disposed of by the county. As construed by Attorney General Opinion No. 70, dated July 23, 1945, the time for redemption under this law was within two years from the date of the bid by the county auditor or April 15, 1945, whichever date was later. This opinion applied to tax sales to the county in the years prior to the passage of the Act meant that sales to the county in the years 1941, 1942, and 1943, if the property had not been disposed of by the county, were eligible for redemption at any time to and including April 15, 1946; that sales to the county in the year 1944, if the property had not been disposed of by the county, were eligible for redemption at any time within two years after the first Monday in December 1944, or to December 4, 1946.

“In 1947, the Legislature, by Chapter 101, Acts of 1947, approved March 7, 1947, amended the same section (262) that was amended by Chapter 137, Acts of 1943. The amendment as enacted in 1947 still contains the same provision for redemption as did the amendment of 1943, that is, one year time limit with added percentages identical to those in the 1943 law.

“The section (262) as amended in 1947, in directing the county to sell real estate acquired through tax added a provision:

“‘Provided, however, That if the board of commissioners and the county council shall determine that any of said real estate should be retained by the county to be used for office purposes for any division of county government, then said county shall not sell the real estate so determined to be retained, and the board of commissioners are hereby authorized to repair, maintain, equip, alter, and construct buildings upon said real estate so retained, in the same manner as for other county buildings.’”

“The following questions arise relative to the laws herein referred to, upon which I desire your official opinion:

“1. Which law controls the period of redemption from sales of real estate bid in by the county auditor in each of the years 1945 and 1946?

“2. If there is no change in the laws effecting such redemptions, will the same law control redemptions from sales of real estate which the county auditor will bid in on the first Monday in December, 1947?

“3. Under the provision added by Chapter 101, Acts of 1947, upon decision of the county commissioners and the county council to retain any real estate acquired by the county through tax sale, is the county required to make any payment of taxes or other money for the benefit of other taxing units which would normally have shared in the receipt resulting from sale by the county had the county sold the real estate instead of retaining it?

“4. If your answer to question 3 is in the negative, would other taxing units having a pro-rata interest in the tax for which the real estate was purchased by the county completely lose their pro-rata interest in such tax if the real estate were never sold by the county?

“5. Is the omission from the title of Chapter 101, Acts of 1947 of the subject matter relative to authority of the board of commissioners to repair, maintain, equip, alter, and construct buildings upon real estate so retained of sufficient importance as to make any part of the added provision without force or effect or inoperative?”

Chapter 101 of the Acts of 1947 (page 296) reads as follows:

“\* \* \* The original owner or occupant of any real estate sold as provided in Section 260 of this act, or any other person or persons having an interest therein, may if the title to said real estate has been

acquired by the county as provided in Sec. 260 of this act, redeem the same at any time during the year next ensuing in the following manner:

“If redeemed within six 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 months and within one year, such owner, redemptioner or any lien holder 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; Provided, however, That the owners or any other person having an interest in any real estate bid in for the county by the county auditor on the first Monday of December, 1942, may redeem the same at any time until April 15, 1945, and 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 ten percentum of such sum in addition, notwithstanding any provision to the contrary herein contained.

“Whenever any county acquires title to any real estate under the provisions of this act, said county shall sell said real estate without unnecessary delay and such sales by such counties shall be in the same manner now provided by law for sale of lands owned by counties: Provided, however, That if the board of commissioners and the county council shall determine that any of said real estate should be retained by the county to be used for office purposes for any division of county government, then said county shall not sell the real estate so determined to be retained, and the boards of county commissioners are hereby authorized to repair, maintain,

equip, alter, and construct buildings upon said real estate so retained, in the same manner as for other county buildings.

“The money received from said sale or transfer of title after the payment of cost shall be apportioned to the tax levying and tax certifying bodies in proportion to their interests in the taxes for which said real estate was sold based upon the several tax levies established by them for the year last preceding the sale, and if any surplus remains such surplus shall revert to the general fund of such county: Provided. That the provisions of this act shall not be deemed to repeal any of the provisions of Chapter 153 of the Acts of the Eighty-first General Assembly.”

This act amends Section 262 of the property tax law of 1919 as previously amended by the Acts of 1941, page 714 and Acts of 1943, page 407 (Sec. 64-2205 Burns' 1943 Repl.). Section 1 of Chapter 322, page 1495 of the Acts of 1945 (Burns' 64-2205 (n) 1945 Pocket Supp.) is as follows:

“Section 1. In every case where lands have been bid in or title acquired and not disposed of by the county auditor for such county pursuant to the provisions of Chapter 224 of the Acts of the 82nd General Assembly and Chapters 43 and 137 of the 83rd General Assembly of the State of Indiana, and where such county has not affected further disposition thereof, to another, pursuant to law, the original owner or occupant of any such real estate or any other person or persons having an interest therein may redeem from such sale at any time during the next two years ensuing, or April 15, 1946, whichever date is the later, in the following manner: If redeemed not later than six months after such auditor shall have so bid in the same on behalf of the county, then by the payment to the county treasurer, for the 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 the costs and five percentum of such sum for which the land was so bid in, in addition; and whenever redemption shall

be effected after the expiration of six months, then the redemptioner shall pay, in addition to what he shall be required to pay on redemption for the first six months ensuing such bidding in, one per centum on the amount for which said property was bid in, for each sixty days or fractional part of any sixty-day period elapsing after the first six months to the date of such redemption. In all cases where lands are so redeemed, no certificate of redemption shall issue until and unless the redemptioner also pays and discharges all taxes which have accrued and become payable thereon after the auditor's bid on behalf of the county."

Chapter 101 of the Acts of 1947 merely inserted the proviso in the third paragraph of the act first above quoted and reenacted the balance of said section.

In *Rauch v. Board of Commissioners of Marion County* (1919), 72 Ind. App. 412, 421, the court quoted from a previous case as follows:

"\* \* \* 'A later law which is merely a re-enactment of a former does not repeal an intermediate act which has qualified or limited the first one, but such intermediate act will be deemed to remain in force, and to qualify or modify the new act in the same manner as it did the first.' \* \* \* Where a law is amended and re-enacted as amended, any intermediate law inconsistent with the new matter introduced, or change made by the amendment, will be repealed. Where a law is substantially re-enacted, it is said to show that the legislature did not regard it as repugnant to an intermediate act to some extent covering the same subject."

It will be noted that the 1945 act granted an additional period of redemption only where the county had not sold the property acquired by tax sale. To the extent that it added this additional, conditional period of redemption it modified Section 262, as amended, in 1943. The 1947 act re-enacted the 1943 act as so modified unless the provisions of the 1945 act are impliedly repealed by reason of a con-

flict between the provisions of the 1945 act and the proviso added by the 1947 act.

The proviso added by the 1947 act authorizes the county to retain title to the real estate acquired by tax sale in lieu of selling the same and to repair, maintain, equip, alter and construct buildings upon such retained real estate for county office purposes. If such retention of title by the county be given the same effect as a sale of the property by the county, then there is no conflict between the provisions of this 1947 proviso and the 1945 act, for then the 1945 act would merely be inoperative on such property after the determination by the county commissioner and county council to retain the real estate.

Repeals by implication are not favored and where a construction can be given to a statute which will avoid a repeal that construction will be adopted.

*Medias v. Indianapolis*, (1939), 216 Ind. 155, 162.

It would appear, therefore, that the 1945 act is fully operative in like manner as it was prior to the 1947 amendment except that action of the county commissioners and the county council in determining to retain title for county purposes in lieu of selling this property would cut off the conditional right of redemption granted by the act of 1945, after the expiration of the first year's absolute right of redemption.

The 1947 act makes no provision for the payment by the county of any part of the delinquent taxes when the county determines to retain the property and such provisions cannot be supplied by construction or intendment.

*State v. Squible* (1908), 170 Ind. 488, 492;  
*Miles v. Indiana Service Corp.* (1933), 97 Ind. App. 400, 405.

The title of the 1941 amendment was before the Supreme Court in *First Bank and Trust Co. v. Ralston* (1944), 222 Ind. 584 where the title was held to be sufficient to cover the subject matter of the 1941 amendment on the theory that this act merely affords a remedy to the county for the collection of

delinquent taxes. The subject matter of the 1945 amendment still concerns the realization of value by the county upon delinquent taxes and I believe that it is probably incidental to "An act concerning taxes, \* \* \*".

I am, therefore, of the opinion that the questions which you ask should be answered as follows:

1. Both Chapter 322 of the Acts of 1945 and Chapter 101 of the Acts of 1947 affect the period of redemption from sales of real estate bid in by the county auditor at tax sale in the years 1945 and 1946 and under these acts the redemptioner would have an absolute right of redemption for a period of one year after this sale and might have an additional year in which to redeem, which additional period may be terminated by either the sale of such real estate by the county or its determination to retain it for county office purposes.

2. The same rules would affect redemption of real estate bid in by the county auditor in December of 1947.

3. The county is not required to make any payment of taxes or other money for the benefit of other taxing units which would normally have shared in the receipts resulting from sale by the county had the county sold the real estate instead of retaining it.

4. Other taxing units having a prorata interest in the taxes for which the real estate was purchased by the county would have no interest if the real estate is retained and never sold by the county.

5. The omission from the title of Chapter 101, Acts of 1947 of the subject matter relative to authority to the board of commissioners to repair, maintain, equip, alter and construct buildings upon real estate so retained is incidental to the subject matter expressed in the title of this act. It is, therefore, in force and in effect.