

if the levy provided in a plan adopted prior to the amendment exceeds seventy-five (75) cents, it is automatically limited by statute to that amount.

3. Where a time limit is expressed in the original proceedings for the establishment of the levy, that time limit controls except that if that time limit exceeds twelve years, it is automatically limited by statute to the twelve year maximum. A decrease in amount would not automatically increase the time fixed in the original plan.

4. The funds raised by the cumulative building fund levy may be invested in U. S. Government securities under the provisions of Chapter 9 of the Acts of 1945.

5. The funds raised by the cumulative building fund levy may be used to acquire the ground upon which to erect the building contemplated by the levy.

6. The school authorities or the State Tax Board may, under the provisions of the 1947 amendment, reduce or rescind an existing cumulative building fund levy, but may not increase it except by the process of rescinding the existing levy and proceeding anew under the provisions of Sections 1 and 2.

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OFFICIAL OPINION NO. 33

June 10, 1947.

Hon. John H. Nigh, Director,  
Indiana Department of Conservation,  
Indianapolis, Indiana.

Dear Mr. Nigh:

I have your letter of April 28 requesting an opinion of this office on the interpretation of the statute pertaining to setting a fire or permitting a fire to spread. Your letter presenting your question is as follows:

“Fire prevention in state forests is one of the important duties of the Division of Forestry. Our District Foresters bring to the attention of the prosecuting attorneys any violation of penal statutes intended to protect public or private forests from fire.

"In Jennings County a farm tenant started a fire and burnt broom sedge on the farm he had rented. The fire spread to the wooded area of an adjoining landowner. The prosecuting attorney, when the matter was called to his attention, was doubtful whether Sec. 1 of the Acts of 1905, ch. 49 (B. I. S. A. 1942 Repl. 10-309) applies to lease holders. It provides any person shall be liable 'who shall set fire to any woods belonging to another or shall place a fire *on his property* and permit it to spread to the woods of another. \* \* \*'

"I would appreciate an opinion from your office in order that our Division of Forestry and the prosecuting attorney may be advised as to the liability of a tenant."

The statute upon which your inquiry is based is as follows: Acts 1905, ch. 49, § 1, p. 64, Burns' 1933, R. S., Section 10-309 (1942 Repl.).

"Any person who shall set fire to any woods belonging to another or shall place a fire *on his property* and permit it to spread to the woods of another shall be liable to a fine of not less than five dollars (\$5.00) or more than fifty dollars (\$50.00) and furthermore, shall be liable to the owner or owners for the full damages sustained by reason thereof, and it shall be the duty of the prosecuting attorney of the county to faithfully investigate and prosecute each and every case, and any failure to do so by him shall be sufficient evidence for his removal from office, and his bondsmen shall become liable for the full damage hereof sustained."

Patently, this statute was designed to encourage forestry and in addition the penal provision, gives full protection in damages to the owners of woods. The precise question is whether a lease holder would be liable under this statute. This depends upon the construction given to the phrase "*on his property*".

A "lease" gives the right of possession of the premises against the whole world, including the owner. 36 C. J., L. & T. 50.

A "lease hold" is defined as an estate in realty held under a lease and is the right to use property upon which a lease is held for the purpose of the lease. A "lessee" is defined as an owner pro-tanto of the estate which is leased to him. 35 C. J., L. & T. 1142.

A "leasehold" is "'property', use, or right of possession and subject of ownership, \* \* \*."

Orton v. Daigler (1933), 23 Pacific (2d) 831;  
133 Cal. App. 112.

The term "property in lands" is not confined to title in fee, but is sufficiently comprehensive to include any usufructuary interest whether it be a lease hold or mere right of possession.

Harvey Coal and Coke Company v. Dillon  
(1905), 53 S. E. 928, 59 W. V. 605.

In the case *State ex rel. Star Publishing Company v. The Associated Press Company*, (1900), 60 S. W. 91; 159 Missouri 410, it was stated that:

"\* \* \* In a strict legal sense, land is not 'property', but the subject of property. The term 'property', although in common parlance frequently applied to a tract of land or a chattel, in its legal signification 'means only the rights of the owner in relation to it.'  
\* \* \* 'Property is the right of any person to possess, use, enjoy, and dispose of a thing' \* \* \*  
Use is the real side of property."

Thus, a tenant in possession and actually using farmland under a lease is in reality asserting his ownership of his exclusive right to control his property.

I do not find the exact phrase in question discussed in any Indiana case. However, in the U. S. Circuit Court of Appeals in *First State Bank of Thompson Falls v. U. S.*, (1937), 92 Federal (2d) 132, in construing a Montana statute stating

in part: “\* \* \* The person, firm or corporation on whose property such fire exists and *from whose property such fire spreads* is hereby made responsible,” and held that a “Statute rendering owner of property liable for cost of extinguishing forest fire thereon is intended to place responsibility of guarding against fire upon person whose ownership includes right of possession since he is the person presumably nearest the fire contemplated by the statute.  
\* \* \*” (Our emphasis).

This case involved the interpretation of the phrase “*on whose property*” such fire exists and in interpreting the statute in the light of its manifest purpose (which was to prevent forest fires) the court thought it clear that the statute intended to place responsibility upon the person whose ownership was nearest the land and who was enjoying the right of possession.

I feel that the same interpretation would apply in this instance and it is my opinion that a lease holder in possession would be liable under the statute. This opinion is restricted to the precise question propounded.

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OFFICIAL OPINION NO. 34

June 18, 1947.

Mr. Joe McCord, Director,  
Dept. Financial Institutions,  
State House,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of May 2, 1947 which reads as follows:

“I have been requested by the Members of the Department of Financial Institutions to ask for your opinion upon the following questions concerning the rights and responsibilities of the department in its supervision of private banks.

“1. Would the department have the authority under Section 10 (c) of the Indiana Financial Institutions Act to promulgate rules and regulations