

the State Seed Commissioner of Indiana has prepared a new proposed rule, numbered 6 concerning the following subject: "Additions and subtractions from the noxious weed seed lists." Then follows a statement it is proposed to add certain seeds to the list and certain subtractions from the list. In the specified seeds considered for subtraction from the list you do not specify wild carrot in either the proposed rules or the legal publication of notice.

However, I am of the opinion your notice is somewhat general that as such hearing you proposed adopting a rule "concerning \* \* \* additions and subtractions from the noxious seed lists." This is sufficient on final hearing, following said public hearing, for you to adopt additions or subtractions, other than those specified, as long as they are to effect the noxious weed seed lists. This is true for the very reason that the public hearing, and the final hearing for adoption of such proposed rules is to afford the adopting agency the opportunity to make additions or corrections other than those incorporated in the original proposed rules, so long as they are made within the general purview of the published notice given.

It is further pointed out the above quoted provision of Section 4 of Chapter 120 of the Acts of 1945 specifically provides that no rule shall be invalid because of reference to the subject matter being inadequate or insufficient.

From the foregoing I am of the opinion that on your final meeting for adoption of rule 6 you may include in the exemption from the Noxious Weed Seed Lists the weed "wild carrot".

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OFFICIAL OPINION NO. 43

July 29, 1947.

Hon. C. E. Ruston,  
State Board of Accounts,  
State House,  
Indianapolis, Indiana.

Dear Mr. Ruston:

I have your letter of March 10 addressed to this office which is as follows:

“Section 263, Chapter 59, Acts of 1919, Page 198, (Burns’ Revised Statutes 1933, 1943 Replacement 64-2403) made it the duty of a purchaser at tax sale to cause a deed to be executed and placed on record within four (4) years from the date of sale and provided that upon failure so to do that the amount due the purchaser ceased to be a lien on the lands so purchased.

“Section 1, Chapter 38, Acts 1947 (H. B. 12) amended this section by adding a proviso whereby the purchaser at tax sale would be permitted to cause a deed to be executed and placed on record at any time within two years from the effective date of the 1947 Act in cases where such purchaser had paid taxes due on the property and had failed to cause a deed to be executed and placed on record within the four year period.

“May I please have your official opinion on the following questions relating to this subject:

“1. Does the section of the law above referred to, as amended, in 1947, violate Section 24, Article 1 of the Constitution of the State of Indiana?

“2. If your answer to question 1 is in the affirmative, would the section above referred to, as it appeared prior to the 1947 amendment now govern?”

Section 1, Chapter 38 of the Acts of 1947 referred to in your letter provides as follows:

“Section 1. That section 263 of the above entitled act be amended to read as follows: Sec. 263. In all cases where lands have been or may hereafter be sold for delinquent taxes, penalty, interest and costs and a certificate of purchase has been or may be hereafter issued, it is hereby made the duty of such purchaser, his heirs or assigns, to cause a deed to be executed and placed on record in the proper county within four years from the date of said sale and on failure of said purchaser, his heirs, or assigns so to do, then and in that case the amount due such purchaser shall cease to be a lien on said lands so

purchased as herein provided and as is now provided by law: *Provided*, however, in all cases where the purchaser, his heirs or assigns shall have paid taxes due on the property described in the certificate of purchase and has failed to cause such deed to be executed and placed on record within four years as above required, such purchaser, his heirs or assigns shall be entitled to cause a deed to be executed and placed on record at any time within two years from the effective date of this act, and the amount due such purchaser shall constitute a lien on said lands so purchased and shall continue to be a lien during such two year period as provided by law."

All following the underlined word "provided" was added by the 1947 amendment. This is a statute of limitation on tax purchasers for the enforcement of their liens and extends the time in which they may cause a deed to be executed and purports to extend the tax purchasers lien upon the lands purchased.

Your first question relates to the constitutionality of this amendment in reference to Section 24, Article 1 of the constitution which provides:

"No ex post facto law or law impairing the obligation of contracts, shall ever be passed."

It is well established that the ex post facto clause is limited to criminal laws, thus, your question concerns the impairment of the obligation of contract.

For a proper consideration of this amendment, it is necessary to ascertain the positions of the state, the tax purchasers and the delinquent owners that may be affected.

The tax sale purchaser acquires at the time of his purchase, contract rights between himself and the State upon the basis of the laws of the State in force at the time and those contract rights are protected from impairment to the disadvantage of the purchaser by subsequently enacted legislation.

51 American Jurisprudence, 975.

As a general rule, the fundamental test of the validity of the statute is its character as substantive or remedial. If

the rights effected are substantive in character the statute is invalid as applied to those existing at the time of its enactment, but if the statute is merely remedial, it may be made to apply to such rights. *Sansberry v. Hughes* (1910), 174 Ind. 638-640. See also:

51 American Jurisprudence, 971;

111 American Law Reports, 237.

An existing law of limitations is not considered as being a part of the contract. Hence, the legislature may enact a statute which limits the time within which actions may be brought to enforce demands where there was previously no period of limitation or which shortens the existing time of limitation, and such a law may operate upon existing contracts without necessarily being invalid as impairing their obligations.

12 American Jurisprudence, 89.

However, it is unnecessary to develop that proposition at this point, since it is to be noted that in this amendment the rights of the tax purchaser are not curtailed, limited or restricted, but to the contrary they are actually enhanced.

The delinquent owner does not have any contract relation with the State or with the tax purchaser and your first question does not involve the status of such delinquent owner. It is generally held that where a state enacts legislation impairing its own rights, it cannot be heard to complain on constitutional grounds.

*Department of Public Welfare v. Potthoff*  
(1942), 220 Ind. 574, 44 N. E. (2d) 494.

Thus, in my opinion, the answer to your first question is in the negative.

The serious objection of this amendment arises from its retrospective nature and insofar as this affects the delinquent owner. As to those sales certificates upon which no deed has been executed within four years in accordance with Section 263, *supra*, the lien on the property sold had ceased. Thus, these delinquent owners had a vested right to set up

the bar of the statute in defense to any attempt to enforce the lien.

Wilkes Co. v. Forester (1933), 204 N. C. 163,  
167 S. E. 691;

City of Louisville v. Louisville Asphalt Co.  
(1939), 279 Ky. 318, 130 S. W. (2) 739.

I do not find that the status of a barred tax lien or its attempted revival has been adjudicated in our State. Yet, it has been held in other jurisdictions that it is not within the power of the legislature to restore or revive a lien for taxes that has once been extinguished by the lapse of time and an attempt so to do deprived the owner of his property without due process of law.

Kipp v. Elwell (1896), 65 Minn. 525, 68 N. W.  
105;

McCracken County v. Mercantile Trust Co.  
(1886), 84 Ky. 344, 1 S. W. 585;

Berkin v. Healy (1916), 52 Mont. 398, 158 Pac.  
1020.

As to that, you make no inquiry but I think it should be mentioned herein as a caveat.

Thus, there is a serious question as to the validity of the statute in so far as it may attempt to revive those tax liens which were barred by law at the time of its enactment.

However, it is well to bear in mind that the situation in any particular case may be affected by the Soldiers' and Sailors' Civil Relief Act.

In reference to your second question, Section 263 as amended should be given full force and effect subject to the limitations stated above.