

we have said, this is not such a case, \* \* \*.”  
 (First emphasis ours.)

See also *Edes v. Haley, et al.*, 162 Pac. 50 (Wash.), (1917).

Likewise, in this situation we are not concerned with a dispute between rival claimants to any particular terms of office. Here the chief concern is that of the state in preserving the continuity of office as originally provided by the legislature and fixed by the first appointments to the Indiana Athletic Commission.

Since three full term appointments to the Indiana Athletic Commission could not have been made in 1944 it is apparent that two of the commissioners are either holding over, serving unexpired terms or the offices are vacant. It does not seem to me that it is material to determine which of those contingencies is applicable since any determination of the application of a term to a particular commissioner is sheer conjecture. Based upon the analogous election cases, I am of the opinion that none of the commissioners is holding a commission for any fixed and determinable term and whatever his actual status as a de facto or de jure officer may be, he is subject to replacement upon proper appointment and qualification of commissioners for the appropriate statutory terms.

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OFFICIAL OPINION NO. 25

April 5, 1945.

State Board of Tax Commissioners,  
 State House,  
 Indianapolis, Indiana.

Gentlemen:

I acknowledge receipt of your letter of March 16th, reading as follows:

“I am requesting a ruling in regard to an order issued by the State Board of Tax Commissioners April 28, 1943, File No. 4838, Order No. 4515.

“This order was issued in accordance with Enrolled House Act No. 261 in force March 10, 1943. I also

refer you to Burns' Acts of 1933, 64-1407 and, Acts of 1943, Page 682-683.

"I wish to know if this order which was given April 28, 1943, in the matter of cancellation of delinquent taxes is still valid, or do the statutes provide any time limit whereby the tax payer will be required to pay the balance of the delinquent taxes. The order contains a 90-day clause but the statutes do not give the Commissioners authority to do so, at least I do not find any provision for a time limit."

and enclosing a copy of the order therein mentioned. This order reads as follows:

"A petition having been filed by the proper owner or agent and said petition approved by the Auditor, Assessor and the Treasurer of Lake County, Indiana, in the matter of the cancellation or adjustment of delinquent taxes, and this matter having been considered by the State Board of Tax Commissioners on April 28, 1943, and all of the facts having been carefully considered, this board finds that the taxpayer is entitled to relief and that a cancellation in part of the delinquent taxes, penalty and interest existing December 1, 1941, will be equitable and just, and will be advantageous to the particular taxing units in which the property is situate, if the balance of the tax, interest and penalty that is due is paid.

"IT IS THEREFORE ORDERED: That the percentage of the delinquent taxes, interest and penalties existing on December 1, 1941, on the real estate described in petition herein and at the date of this order remaining unpaid, be cancelled in the amounts as shown, if there be paid, within 90 days of the date of this order, the balance of all taxes, interest and penalties that at the date of payment are due and unpaid."

Chapter 241 of the Acts of the 83rd General Assembly (1943), (Burns' Indiana Statutes, 64-1407) authorizes the Tax Board to order a cancellation of the whole or any part of the tax:

“(2) Where delinquent taxes, prior to (to) the passage of this Act, have accumulated against real property, to the extent and in the amount that in the opinion of the State Tax Board a cancellation thereof, in whole or in part, will be equitable and just and will be advantageous to the particular taxing unit in which the taxed property is located. Provision (2) herein granting authority to the Indiana Tax Board to cancel delinquent (delinquent) taxes shall not apply to any delinquency that has occurred since December 1, 1941.”

Like all administrative boards of the state, the State Board of Tax Commissioners has only such powers as are specifically delegated to it by law.

Cody v. Board (1932), 204 Ind. 87, 91;  
State Board of Tax Comm. v. McDaniel (1927),  
199 Ind. 708, 716.

“The State Board of Tax Commissioners is a statutory board, and its power and authority are conferred and limited by the statute. \* \* \*.”

“Where power is given to it to do a certain thing in a certain manner, the manner prescribed is the measure of the power given. \* \* \*.”

Gray v. Foster (1910), 46 Ind. App. 149, 155.

See also:

Doyle v Lafayette Savings Bank (1923), 81 Ind.  
App. 177.

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.

No authority can be found in the statute above quoted which would authorize the State Board of Tax Commissioners to impose a condition of any nature upon the exercise of its power to cancel taxes. No other statute has been found which would confer this power generally.

The case of *State ex rel. v. Town of Hessville*, (1921), 191 Ind. 251, is of some value in the determination of the instant question. In that case the Circuit Court was authorized on appeal to annex or deny annexation of lands to a municipal corporation. The court entered an order annexing certain lands to a city and included in the order of annexation an order by agreement of parties that such annexation should not become effective until five years from the date of the order. The Supreme Court said as to this feature of the case:

"It may be conceded that the court had no power to suspend the effect of this judgment. The court was authorized by Sec. 8897 Burns' 1914, *supra*, to annex or deny annexation. The question then is, What effect did the attempted postponement of the judgment have upon its validity? When that which refers to the postponing of annexation is stricken out, there is a proper and complete judgment annexing the territory to the city of Hammond. Because the court put more into this judgment than is authorized by law, does that destroy the valid part of the judgment? We think not. For the authorized part is separable from that which is unauthorized. The remonstrance filed in the circuit court against the ordinance of annexation suspended the operation of that ordinance until judgment was rendered. Sec. 8897 Burns' 1914, *supra*. A denial of annexation by the judgment would have precluded the city from passing another ordinance within two years. Sec. 8897 Burns' 1914, *supra*.

"We hold that the part of the judgment italicized was unauthorized, and we hold that it is separable from the authorized part of the judgment. In other words, by striking out the italicized words in the judgment, there is a valid judgment of annexation. The italicized words have no effect upon the judgment. What effect they may have upon the parties to the agreement, we need not here determine."

In the proceeding before the State Board of Tax Commissioners that board had the power to cancel taxes or deny a cancellation and, in accord with the last decision cited, the unauthorized portion of the order (which conditioned the cancellation upon certain payments of taxes) exceeds the authority of the board but the remainder of the order may stand without such unauthorized portion.

Therefore, I am of the opinion that the imposition of a condition upon the exercise of its power was beyond the authority of the board, and to the extent that this order thus exceeds the authority of the board, it is void.

I am also of the opinion that to the extent that this order cancels the taxes, or proportion of taxes set forth in it, it is valid and is unaffected by the time limit contained in the invalid condition.

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OFFICIAL OPINION NO. 26

April 6, 1945.

Hon. Ralph F. Gates, Governor,  
State of Indiana,  
State House,  
Indianapolis, Indiana.

My Dear Governor:

This will acknowledge receipt of your letter, which is as follows:

"I would like an opinion from your office clarifying the extent of my authority toward ending commissions which I make, providing the one commission did not prove satisfactory.

"Most of the commissions from this office read for a certain term of years and at the pleasure of the Governor. It is this type commission that I am particularly interested in, and want to know just how broad my authority is."

I assume that the commissions referred to in your letter will substantially follow the language of the statute relative to the particular appointment in question. The Indiana Statutes have different provisions as to different officers. Roughly,