

## OFFICIAL OPINION NO. 28

April 7, 1945.

Hon. Otto K. Jensen, State Examiner,  
Department of Inspection and Supervision  
of Public Offices,  
State House,  
Indianapolis, Indiana.

Dear Mr. Jensen:

I have your letter of April 5th as follows:

“At the regular sale of real estate for delinquent taxes held in 1943 a parcel of real estate offered for sale for delinquent taxes for the first time was sold for an amount in excess of the amount of the taxes, penalty and costs. The amount of the surplus was paid into the county treasury for the benefit of the person entitled thereto as provided by Section 64-2208 Burns' Replacement 1943.

“This department is asked whether the county treasurer had legal authority to sell real estate offered for sale for delinquent taxes for an amount in excess of the taxes, penalty and costs. Also whether a person redeeming from any such sale is required to pay the per cent in addition, as provided in Section 64-2301 Burns' Replacement 1943, upon the entire amount bid and paid by the purchaser, or only upon the amount of the taxes, penalty and costs for which such real estate was offered for sale.

“I would like to have your opinion upon the questions so presented.”

Your first inquiry is whether the county treasurer may now sell real estate offered for delinquent taxes for an amount in excess of taxes, penalty and costs. Our present laws for sale of lands for delinquent taxes are founded upon Chapter 59, p. 198, Acts 1919, as amended at various times. The problem is in now construing the various amendments together in order to determine the exact mode of procedure in conducting tax sales. Section 259 of Chapter 59, as amended (64-2202 Burns' 1943 Replacement) provides that the list posted by the auditor should show the amount of taxes, penalty, interest

and costs. That the sale should be "at public auction" and "continuing from day to day thereafter until all are sold." It is difficult to imagine a public auction which is continuous from day to day, because the treasurer would never know what was the highest bid until the final day of the sale. However, read in the light of Section 260 of Chapter 59 it is apparent that the sale was to be held open on a particular tract only until "The person offering at said sale to pay the required sum for the least quantity of any tract shall be considered the purchaser of such quantity: \* \* \*." At the same time, Section 266 of the same Act, and which is still in effect as Section 64-2208 Burns' 1943 Replacement, provides:

"Where such sale is made, the purchaser at such sale shall immediately pay the amount of his bid to the treasurer, who shall pay the surplus, if any, to the person entitled thereto; \* \* \*."

Consequently, it must have been contemplated that the treasurer might accept a bid which was more than sufficient to pay the taxes with interest, penalties and costs.

Section 260 of Chapter 59 has since been amended by Section 2, Chapter 224, p. 714 of the Acts of 1941 and Section 1 of Chapter 43, p. 96 of the Acts of 1943, (64-2203 Burns' 1943 Replacement). The provision for sale to the purchaser who will pay the required sum for the least tract is no longer in existence. The present statute simply provides:

"\* \* \* such real estate shall be sold for the purpose of collecting all taxes then a lien against such real estate. Said real estate shall be sold by the county treasurer at *public sale* as now provided by the law for the sale of real estate for delinquent taxes including penalties thereon; \* \* \*. The sale shall be for the entire description advertised and be free and clear of all taxes or other encumbrances. \* \* \*." (Emphasis ours.)

The various parts of the law as now read together provide for a sale to be continued from day to day, which in one place is described as a public auction and in another as a public sale, in which the entire tract is sold and for which the only apparent requirement is that the full amount of taxes, interest,

penalties and costs be secured. But there is still a provision in our law for the payment of any surplus to the person entitled thereto.

Of course the principal purpose of the tax sale is to protect state revenue. See *Conway v. Mosier*, 103 Pac. (2d) 465 (Ariz.). At the same time it must have been contemplated by the Legislature that if more than the actual amount due for taxes, interest, penalties and costs could be procured for the owner or other interested person, that amount would be turned over to the person entitled to it. Irrespective of the question whether competitive bidding is required,

*Cf.* 1942 Opinions Indiana Attorney General 95  
3 Cooley, Taxation, 2823,

the sale contemplated is a public sale in the sense that it is openly advertised and openly held. See *Conway v. Mosier*, *supra*.

I am of the opinion that in construing all of the sections of this statute together, if an offer is made which is larger than the actual amount which the treasurer must receive, he would be authorized to accept the larger offer and pay the overplus to the person entitled thereto.

Your second question is, assuming that more than the actual amount due is paid and there is a redemption, must the person redeeming pay the statutory penalties for the full purchase price or for only the actual amount which was necessary to pay taxes, penalties, interest and costs?

Section 27 of Chapter 59 of the Acts of 1919 (64-2301 Burns' 1943 Replacement) provides for redemption as follows:

"The owner or occupant of any land sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two (2) years next ensuing, in the following manner: If redeemed within six (6) months from day of sale, he shall pay to the county treasurer, for the use of the purchaser, his heirs or assigns, *the full sum of the purchase-money named in his certificate*, and all the costs of sale, together with ten (10) per cent in addition; if redeemed after six (6) months and within one (1) year, he shall pay, in like manner, the purchase-

money, together with costs and fifteen (15) per cent in addition; if redeemed after one (1) year and within two (2) years, he shall pay, in like manner, the purchase-money, together with costs and twenty-five (25) per cent in addition, and he shall also pay all taxes which have been paid thereon, with interest at the rate of six (6) per cent per annum on such taxes, and, in case the party purchasing the land, or his assigns, fails to take a tax deed for the lands so purchased within six (6) months after the expiration of the two (2) years, no interest shall be charged or collected from the redemptioner after that time." (Emphasis ours.)

Since that statute is clear that the redemptioner must pay the full sum of the purchase-money named in the certificate, together with the appropriate percentage in addition, I do not see any justification for reading into the statute that the redemptioner pays the additional percentage only upon the amount of taxes, interest, penalty and costs. I am aware that that may work a hardship upon the redemptioner, but at the same time this apparent inequity is somewhat balanced by the opportunity which the redemptioner would have to receive the surplus of any bid to the treasurer. The principle is stated in 4 Cooley, Taxation at p. 3102, as follows:

"A very common condition to redemption is that the party redeeming shall pay a certain specified interest on the sum paid in the purchase; an interest so large that its exaction is in the nature of a penalty. It is not imposed however, exclusively as a penalty, but is given as an inducement to parties to come forward as bidders at tax sales, \* \* \*. The right to exact such an interest is undoubted; \* \* \*."

Consequently, I am of the opinion that the redemption statute must be construed as written and that the redemptioner must pay whatever penalty is applicable to the full purchase price.