ACCOUNTS, STATE BOARD OF: Chapter 137 of the Acts of 1943—proviso applicable to redemption from county under tax sales made in 1942 has no application to such sales made in 1941.

February 2, 1944.

Opinion No. 11

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 December 11th in which you ask for an official opinion upon the following question:

"Would Chap. 137, Acts 1943, have any bearing on property that was bid in by the County Auditor, for the county, on the first Monday in December, 1941?"

Chapter 137 of the Acts of 1943 is an amendment to Section 3 of Chapter 224 of the Acts of 1941. The second grammatical paragraph of Section 3 of the Acts of 1941 reads as follows:

"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 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 (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 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."

The same grammatical paragraph of that section as amended by Chapter 137 of the Acts of 1943 (64-2205, Burns' 1943 Replacement) reads as follows:
"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 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 (5) per centum of such sum in addition; if redeemed after six (6) months and within one (1) year, such owner, redemptioner or any lienholder 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 (7) per centum 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 per centum of such sum in addition, notwithstanding any provision to the contrary herein contained."

The language of the added proviso is plain and the sole question is whether that language may be extended to properties bid in by the county auditor on any date other than the first Monday of December, 1942. Whether the language added by the 1943 amendment be termed a proviso or an exception, I believe the result should be the same. In the face of clear and unambiguous language I am of the opinion that we are not justified in reading into the statute anything in addition to the import of the language itself. As stated in line 2, Section 4933, Sutherland Statutory Construction, 3rd Ed.,

"Where the proviso itself must be considered in an attempt to determine the intent of the legislature, it should be strictly construed."

Pertinent Indiana authorities are to the same effect.
The following are quoted as typical. Eastman v. State, 109 Ind. 278:

"* * * There are, perhaps, extreme cases where exceptions may be created by the courts, but these cases are very rare, and the authority to create exceptions is one to be exercised with great delicacy. It can never be exercised where the words of the statute are free from ambiguity and its purpose plain. * * *"

Board of Election Com'rs of Gibson County, et al. v. State, ex rel. Sides, 148 Ind. 675 at 678:

"* * * However that may be, we are not authorized to extend the meaning of the law beyond that which is written, when that meaning is clear. It would be otherwise in case the language were obscure or equivocal. * * *"

It may be said that the application of the statute to those persons whose property was purchased in 1942 and not those whose property was purchased in 1941 is harsh and unjust, but as stated in Boryczka v. Boryczka, 87 Ind. App. 511 at 514:

"The application of this statute to appellants thereby excluding them from participation in the award, seems harsh and unjust, but we see no escape therefrom. We cannot change its plain provisions."

I am therefore of the opinion that your question should be answered in the negative.