Therefore, if your board enacts such a rule, it must comply with the above statute by having the same approved by the Attorney-General and the Governor and copies thereof filed with the Secretary of State and with the Legislative Bureau before same can be considered to be in full force and effect.

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**TAX COMMISSIONERS, STATE BOARD OF:** Tax lien is extinguished upon purchase of land by state normal schools but personal liability of vendor remains.

January 12, 1944.

*Opinion No. 4*

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of December 7th which reads as follows:

"One of the state colleges owned and operated by the State of Indiana, acquired certain real estate subsequent to March 1, 1943. In the deeds under which the real estate was acquired, there was inserted a provision by which the state college in question assumed and agreed to pay taxes for the year 1943 that are payable in the year 1944.

"Does this Board have the legal right to relieve such college from payment of taxes for the year 1943 that are payable in the year 1944?"

I assume that the college mentioned is one of the state normal schools, although the result reached herein should be the same as to the state universities. The Constitution of Indiana by Section 1 of Article 8 imposes upon the General Assembly the duty of establishing a general and uniform system of Common Schools. By Section 1 of Chapter 36 of the Acts of 1865 the first state normal school was established for the purpose of preparing teachers to teach in the common schools. These preliminary observations are made for the reason that it appears to me that in the establishment and
maintenance of state institutions of higher education, and particularly the normal schools because of their connection with the common schools, the State of Indiana is exercising a sovereign state function.

The pertinent statutory provisions with reference to your question are: Section 335 of Chapter 59 of the Acts of 1919 as amended by Section 5 of Chapter 49 of the Acts of 1920, Special Session (64-2825, Burns' 1943 Replacement). That section provides that "the lien of the state for all taxes for state, county, school, road, township and all other purposes, * * * shall attach on all real estate on the first day of March annually; * * * ." Thus, the lien for taxes upon the land acquired by the college in question had attached at the time of the transfer. Section 5 of Chapter 59 of the Acts of 1919, as amended, (64-201, Burns' 1943 Replacement) provides:

"The following property shall be exempt from taxation:

"First. The property of the United States and of this state."

I am of the opinion, however, that the question here involved is not strictly one of exemptions, but of the liability of the state for taxes imposed for the benefit of the state. A general discussion of that question and the prevailing opinion is found in 2 Cooley, Taxation (3rd ed.), page 1312, wherein the author says:

"Some things are always presumptively exempted from the operation of general tax laws, because it is reasonable to suppose they were not within the intent of the legislature in adopting them. Such is the case with property belonging to the state and its municipalities, and which is held by them for public purposes. All such property is taxable, if the state shall see fit to tax it; but to levy a tax upon it would render necessary new taxes to meet the demand of this tax, and thus the public would be taxing itself in order to raise money to pay over to itself, and no one would be benefited but the officers employed, whose compensation would go to increase the useless levy. It cannot be supposed that the legislature would ever purposely lay such a burden upon public property, and it is there-
fore a reasonable conclusion that, however general may be the enumeration of property for taxation, the property held by the state and by all its municipalities for public purposes was intended to be excluded, and the law will be administered as excluding it in fact, unless it is unmistakably included in the taxable property by the constitution or a statute.

Thus, it has been held in Indiana that taxes upon lands belonging to the state are improperly levied and a sale for taxes under such circumstances is void.


Although the state is not liable for current taxes, the more serious problem is presented as to the state's liability for taxes which have already accrued upon property purchased by a state or an instrumentality of the state. Although it appears that this question has never been adjudicated in Indiana, some indication of the opinion of the court is found in Reid v. State ex rel., 74 Ind. 252, which involved the legality of a tax sale of property after it had escheated to the state. Taxes for which the property was sold had accrued both before and after the death of the decedent. There the court said:

"But, returning to the case in hand, if the purchaser at the tax sale knew of the escheats, he knew that the sale was illegal, the claim for the taxes being merged in the ownership in fee."

It has been held in cases in other jurisdictions that where land is acquired by the state upon which there is already a lien for taxes, the lien no longer exists as against the state. See City of Laurel v. Weems, 56 So. 451 (Miss.), and cases therein cited, in which the court said:

"Taxes are charges levied by the sovereign state upon the persons of its subjects or citizens, and not charges upon itself. Revenue is the object of taxation, and none would result from levying a tax upon the agencies of the state, through which it exercises the functions of government, or by virtue of which it protects and enforces its rights or those of its citizens."
See also:

Gasaway v. City of Seattle, 100 Pac. 991 (Wash.);  
State v. Board of County Com'rs, 25 Pac. (2d) 1074 (Okla.).

It is true that part of the taxes levied would accrue to the benefit of subdivisions and yet, as stated in the case of Gasaway v. City of Seattle, supra:

"No person or municipality can acquire, as against the state, a vested right to taxes, or the right to insist upon the collection of taxes when levied."

In the light of the existing law and reasons as stated in Cooley on Taxation, I am of the opinion that the lien for taxes upon the land acquired by the state college is extinguished. But does it follow that the college need not pay the taxes? Presumably the purchase of the land assuming taxes reduced the purchase price to the college. The assumption of taxes was a part of the consideration for the transaction. In Indiana the owner of real property upon which taxes are assessed is personally liable for those taxes.

"A person owning property on the first day of March is personally liable for the taxes on such property for that year."

Darnell v. State, 174 Ind. 143.

See also:

Foresman v. Chase, 68 Ind. 500;  
Prudential Casualty Co. v. State, 194 Ind. 542.

It follows, then, that the vendor of the real estate is personally liable for the taxes. Having assumed that obligation of the vendor, as a matter of contract between the parties, it is my opinion that the college has bound itself to fulfill the obligation to its vendor. See Wheat v. Hamilton, 53 Ind. 256. As stated in City of Indianapolis v. Indianapolis Water Co., 185 Ind. 277 at 291:

"But the State, although not a corporation in the strict and subordinate use of the term, may and does act as a corporate entity in a broad sense when it
engages in the promotion and construction of public enterprises, in establishing and maintaining public institutions, and in binding itself generally by contract. Its acts in that capacity are subject to the same principles of fundamental law as are the acts of an individual, although, as a matter of public policy, it is immune from suit to enforce its obedience to such principles. * * *"

So far as I am able to ascertain, the Indiana statutes permitting cancellations are Section 209 of Chapter 59 of the Acts of 1919, as amended by subsequent amendments (64-1407, Burns' 1943 Replacement) and Section 1 of Chapter 49 of the Acts of 1933 (64-2831, Burns' 1943 Replacement). The former provides for correction of assessments or cancellation in certain specific situations by the State Board of Tax Commissioners, among which the last paragraph in that section provides for cancellation of taxes for a county, township, city or town, but makes no provision for the instant case. The latter statute provides for partial cancellation upon assumption of taxes by municipal corporations. It is interesting to note, by that statutory provision, upon assumption of taxes by a municipal corporation only that part of the taxes distributable to the county, township, civil or school, city or town, civil or school, is cancelled and the state-wide levies remain to be paid by the municipalities. Since there is no express statutory authority for cancellation as in this case, the State Board of Tax Commissioners would have no right to release the college from its obligation to the vendor by cancellation of taxes. It has been uniformly held in Indiana that, "the state board of tax commissioners is a body of special statutory powers and acts outside of its granted powers are absolutely void." See: State Board of Tax Commissioners v. Belt Railroad and Stock Yards Co., 191 Ind. 282, and cases therein cited.

There is nothing in the opinion of the Attorney General found in the 1939 volume of such opinions on page 294 which conflicts with the conclusion herein.