

postulate the Constitution recognizes that the business of education is a governmental function and makes public education a function of state government as distinguished from local government. Sec. 1, Art. VIII, Indiana Constitution. 'It was evidently the intention of the framers of the Constitution to place the common school system under the direct control and supervision of the state, and make it a quasi-department of the state government'; (Greencastle Twp. v. Black (1854), 5 Ind. 557, 563) 'a centralized and not a localized form of school government.' State ex rel. v. Ogan (1902), 159 Ind. 119, 121, 63 N. E. 227.

"Under the legislative act of 1852 (Sections 4 and 32, ch. 98, p. 439, R. S. 1852, Vol. I) the civil townships, towns and cities were made school districts. By later legislative enactment civil townships and incorporated towns and cities were made 'distinct municipal corporations for school purposes' (Sec. 28-2402, Burns', etc., 1933, Acts 1865, ch. I, p. 3, Sec. 4) and thus the school government of the state was separated from civil government. Consequently school corporations and school officers, as such, do not act as agents of civil municipal corporations or civil administrative units. * * *"

In view of the foregoing authorities, the legislature could have only intended to deal with the civil cities and not the school cities.

BOARD OF ACCOUNTS: Whether Chapter 88 of the Acts 1915 (since repealed) may be used to authorize assessments as to drain established under the 1915 Act.

April 7, 1943.

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

Dear Mr. Jensen:

I am in receipt of your letter dated April 2, 1943 stating that in Dubois County, Indiana a drainage ditch association

was formed under the provisions of Chapter 88 of the Acts of 1915 and your question is as follows:

“Was authority to levy assessments under the provisions of Chapter 88 of the Acts of 1915, terminated upon the repeal of said Chapter 88 by Section 10 of Chapter 124 of the Acts of 1917?”

Your letter fails to state all the facts relative to the establishment of the drainage ditch association in question, therefore, for the purpose of answering your question, I assume that the following facts are true, to-wit: That the Dubois County Drainage Ditch Association was created and established by a valid judgment of the Dubois Circuit Court; that all proceedings which preceded said judgment were in strict conformity to the provisions of Chapter 88 of the Acts of 1915 and that by reason thereof the Dubois Circuit Court had jurisdiction of such matter and of all the parties affected by said proceedings; that the drainage ditch association was established and constructed pursuant to said judgment of the Dubois Circuit Court and while said Chapter 88 of the Acts of 1915 was in full force and effect; that said judgment was unappealed from, never vacated, set aside, modified, or reversed and is still in full force and effect. If these facts are all true, the rights of the parties as established, declared and adjudged by the judgment of the Dubois Circuit Court became vested. Thereafter in 1917 Chapter 88 of the Acts of 1915 were repealed by Section 10 of Chapter 124 of the Acts of 1917. A reference to Chapter 124 of the Acts of 1917 discloses that no saving clause was contained in said act. However, the Act does provide for a transfer and continuance of all proceedings established under Chapter 88 of the Acts of 1915.

Your letter further states that continuously since the creation of the Dubois County Drainage Ditch Association and the construction of said drainage ditch said association has, each two years, levied assessments for the maintenance of the association against property of persons included within the drainage, sanitary and reclamation district, and I further assume that these assessments as levied have been collected and paid and the drainage ditch maintained as provided by the judgment whereby it was created and constructed.

Chapter 124 of the Acts of 1917 was thereafter repealed by Section 81 of Chapter 264 of the Acts of 1933. However, Section 79 of Chapter 264 of the Acts of 1933 expressly provides:

“This Act shall not affect any pending proceedings within the purview of this Act, but such proceedings shall be continued to final determination and conclusion under the provisions of the act under which the petition was filed.”

In the case of Board, etc. v. Fennig, 211 Ind. 411 on page 414 the Supreme Court of Indiana in an opinion by Judge Fansler construed the effect of the repealing clause, Section 81 of Chapter 264, Acts of 1933, and the saving clause contained in Section 79 of the same Act. The Supreme Court expressly held that the saving clause and the repealing clause took effect concurrently and for this reason the proceedings established under a prior drainage law of 1913, which was expressly repealed by the Act of 1933, were continued in full force and effect. I also call your attention to the language of the Supreme Court of Indiana in the case of Taylor v. Strayer, 167 Ind. 23 which involved drainage proceedings and the effect of a repealing clause and also a saving clause. On page 29 of 167 Ind. the court uses the following language:

“A final judgment recovered in the courts vests the owner thereof with certain interest as cannot be arbitrarily taken away, and it was entirely appropriate for the legislature to disclaim any intention to disturb such rights, and to remove all question as to the right to proceed with the construction of ditches so established and the collection of assessments made therefor.”

In addition to the above authorities Burns' R. S. 1933, Section 1-307 reads in part as follows: “And the repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred under such statute * * * and such statute shall be treated as still remaining in force for the purposes of sustaining any proper action or prosecution for the enforcement of such * * * liability.”

It is my opinion that the vested rights established, created and declared by the judgment of the Dubois Circuit Court creating the drainage ditch association constitute a liability within the meaning and purview of Section 1-307, *supra*, see *Wise v. McKeever, Trustee* (1915), 184 Ind. 686; *State ex rel. v. Ritters Estate* (1943), Ind. App. 46 N. E. (2d) 736 on 744. Therefore, it is my opinion that the authority of the Dubois County Drainage Ditch Association as created and established by the Dubois Circuit Court to levy assessments for the maintenance of the drainage ditch was not terminated by the repeal of Chapter 88 of the Acts of 1915 by Section 10 of Chapter 124 of the Acts of 1917.

**STATE DEPARTMENT OF PUBLIC WELFARE: Whether
State and County Departments may release invalid liens.**

April 7, 1943.

Hon. Thurman A. Gottschalk, Administrator,
State Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have your request for an opinion as to your right to release of record, without consideration, welfare liens, which were invalidated by a 1942 Supreme Court decision, *County Department of Public Welfare, et al. v. Potthoff*, 44 N. E. (2d) 494.

You state that many examiners of titles are making the objection that the lien should be released by the state and county departments of public welfare and they are refusing to approve the titles unless a release is executed.

The law under which the liens accrued (Acts 1936, Ch. 3, Sec. 44-48) was repealed in 1941 (Acts 1941, Ch. 201, Sec. 2). The Supreme Court by its opinion in the *Potthoff Case*, *supra*, released all liens which had not been foreclosed. However, lack of knowledge of the law applicable, has caused some attorneys and purchasers to regard the liens as clouds on the titles.