

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.

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**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The law under which the liens accrued (Acts 1936, Ch. 3, Sec. 44-48) was repealed in 1941 (Acts 1941, Ch. 201, Sec. 2).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.

An Act of 1925, Ch. 94 (Burns' 1933, Sec. 56-712), has direct bearing on the problem. The title and body of the Act read as follows:

*"Title of Act.* The title of Acts 1925, ch. 94, reads: 'An act providing for the release of mortgages, mechanics' or other liens of record in any of the county or city offices of this state, by the person whose duty it shall be to release the same when any such mortgage, mechanics' or other lien shall have been paid *or discharged* and providing a penalty for failure to release the same and the appointment of a commissioner and repealing all laws and parts of laws in conflict thereof.'

"It shall be the duty of every person, firm, corporation, copartnership, association, administrator, executor, guardian, trustee, or other person, who is the owner, holder or custodian of any mortgage, mechanic's lien, judgment or other lien which is recorded in the state of Indiana, to release, discharge and satisfy of record such mortgage, mechanic's lien, judgment, or other lien, when the debt or obligation, together with the interest thereon, which such mortgage, mechanic's lien, judgment, or other lien, was made to secure, shall have been fully paid, lawfully tendered *and discharged.*"

It will be noted the words "paid *or* discharged" are used in the title, whereas "paid *and* \* \* \* discharged" are found in the body of the Act. Since the welfare liens were discharged, but not paid, it is important to know which wording described the intention of the legislature.

It is well settled that the title of an act may be used as a guide in determining the intention of the legislature. State ex rel. Daubenspeck v. Day (1919), 189 Ind. 243. It is also a well recognized rule of construction that "and" may be interpreted to mean "or" and vice versa, whereby so doing effect may be given to a statute in harmony with the plain legislative intent as gathered from all provisions of the enactment. Armstrong v. State ex rel. Klaus (1919), 72 Ind. App. 303. Obviously, the legislature intended liens to be released of record when they were either paid or discharged.

Therefore, I am of the opinion that the state department of public welfare and the various county departments of public welfare are authorized to release of record any liens which have been held void in County Department of Public Welfare, et al. v. Potthoff (Ind.), 44 N. E. (2d) 494, *supra*.

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**PUBLIC INSTRUCTION: Construction of Chapter 263 of Acts of 1943.**

April 8, 1943.

Hon. Clement T. Malan,  
State Superintendent of Public Instruction,  
State House,  
Indianapolis, Indiana.

Dear Mr. Malan:

I am in receipt of your letter of March 31, 1943 requesting my opinion relative to the interpretation to be placed on rhetorical paragraph 3 of Section 5, Chapter 263 of the Acts of 1943 which reads as follows:

“The State Board of Education shall also determine by uniform rule, applicable throughout the state, when and if the services of full time principals and supervisors shall be deemed to constitute units under this Act.”

There are certain firmly established rules of statutory construction which must be followed in construing a statute or any part thereof. One of these rules applicable to the above language is that in construing a statute the court must first seek to ascertain the legislative intent in enacting the statute and for that purpose must consider all parts of a statute and all the language employed therein; the circumstances under which the statute was enacted; the prior statutes upon the same or related subjects; the evils and mischiefs sought to be remedied, and if such intention can be ascertained, the same must control and be given full force and effect, even though there may be inaccuracies or mistakes in verbiage or phraseology or omissions in the statute as written. See *State v. Markey*, 212 Ind. 59; *W. H. Dreves, Inc. v. Oslo School*,