

STATE BOARD OF TAX COMMISSIONERS: Constitutionality of Chapter 309 of Acts of 1943.

April 12, 1943.

State Board of Tax Commissioners, and
State Examiner,
State House,
Indianapolis, Indiana.

Gentlemen:

I have before me your several requests for official opinions in answer to various questions propounded by each of you as to the constitutionality and applicability of Chapter 309 of the Acts of 1943. Your questions are in general addressed to much the same propositions for which reason I have decided to consolidate the requests and consider them together.

Chapter 309 of the Acts of 1943 is entitled, "An Act concerning taxation and declaring an emergency." In its preamble the Legislature has set out what apparently is thought to be the reasons justifying the legislation and to a large extent defining the situations to which the legislation applies. As defining such situations to which the Act applies it is stated that during the years of 1941 and 1942 the United States of America instituted divers eminent domain proceedings in certain District Courts of the United States of America within the State of Indiana, seeking to take the fee simple title of real estate situated within the State of Indiana from the respective owners thereof. It is also stated that thereafter the fee simple title of such real estate was vested in the United States of America by such eminent domain proceedings or by conveyance without, however, stating when such title vested. A third and last condition as set out in the preamble is that the owners of such real estate were deprived of the use of such real estate for the *growing of crops* during the years of 1941 and 1942.

Section 1 of the Act reads as follows:

"Section 1. That all real estate within the State of Indiana which was embraced within eminent domain proceedings instituted during the year 1941, after March 1, thereof, or during the year 1942 by the United States of America in any district court of the United States of America sitting within the State of

Indiana seeking to take the fee simple title of such real estate from the respective owners thereof, and which said respective owners were deprived of the use of said respective lands during the crop and/or pasture season of 1942 and did not receive crops from said real estate or compensation for said use and/or crops so lost, and the fee simple title to which real estate was thereafter vested in the United States of America through such eminent domain proceedings or by conveyance, be and the same is hereby relieved, released, absolved and discharged from all general property taxes thereon for the year 1942, due and payable in the year 1943, together with the lien or liens, if any, thereof."

Omitting modifying phrases and clauses, it will be observed that real estate within the State of Indiana which fulfils the conditions set out in the Section "is hereby relieved, released, absolved and discharged from all general property taxes thereon for the year 1942, due and payable in the year 1943, together with the lien or liens, if any, thereof."

Section 2 of the Act provides, among other things, that in cases where such 1942 taxes have been levied upon and are assessed against any such real estate the county auditor and the county treasurer are ordered, directed, authorized, and empowered to strike such levies and assessments from the tax duplicates and other books and tax records where such levies and assessments appear of record.

Section 3 provides that the officers striking such levies and assessments from the tax rolls are relieved and released from any responsibility or liability growing out of the same. To simplify the matter, I think I should call attention to the fact that these sections, one, two, and three inclusive, have no reference to 1941 taxes and therefore the language in the first section with reference to the 1941 taxes is inappropriate.

Section 4 deals with the refunding of the 1941 taxes which have become due and payable and have been paid in 1942. Said section reads as follows:

"Sec. 4. That the owners of any real estate within the State of Indiana, which was embraced within eminent domain proceedings instituted during the year

1941, and after March 1 thereof, by the United States of America in any district court of the United States of America sitting within the State of Indiana, seeking to take the fee simple title of such real estate from the owners thereof, and which said respective owners were deprived of the use of said respective lands during the crop and/or pasture season of 1941 and did not receive crops from said real estate or compensation for said use and/or crops so lost, and the fee simple title to which real estate was thereafter vested in the United States of America through such eminent domain proceedings or by conveyance, who have paid and discharged the general property taxes on the respective tracts of such real estate for the year 1941, due and payable in 1942, to the respective treasurers of the respective counties in the State of Indiana wherein such respective tracts are situated, shall be reimbursed for the amounts of general property taxes so paid upon compliance with the provisions set forth in section 5 of this act.”

In the consideration of the questions submitted by you the question of the constitutional validity of the provisions of the Act are obviously in the forefront. In the consideration of this question two provisions of the Indiana Constitution appear to be relevant. First: Section 22 of Article 4 of the Constitution of Indiana provides, among other things, that:

“The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say: * * *

“(12) For the assessment and collection of taxes for State, county, township, or road purposes; * * *”

Second: Section 1 of Article 10 provides as follows:

“The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law.”

With the above sections of the constitution in mind, I desire first to consider the provisions of Section 1. It will be observed that the real estate therein defined and as therein limited is to be relieved from taxes irrespective as to what was the situation of the title at any time during the year, 1942, such release being solely upon the fact to be established that the owners were deprived of the use of the lands during the crop and pasture season and did not receive crops from said real estate or compensation for said use. This clearly includes none of the constitutional bases for exemption, which is limited by the constitution to "municipal, educational, literary, scientific, religious, or charitable purposes."

Art. 10, Sec. 1, Indiana Constitution.

Applying the provisions of Section 1 to the constitutional provision embraced in Section 22 of Article 4, further difficulty arises in attempting to justify the legislation as a general law. In fact, it seems to be thoroughly special in all of its details. It applies only to transactions which took place in 1942. It applies only to real estate producing an income from crops and pasture, or rather the deprivation of use during the crop or pasture season. Moreover, the same thing under that Act could be done in 1943 without similar results following. This is one of the tests as to whether legislation is general or special. Note the language of the author in Lewis' Sutherland Statutory Construction wherein it is said:

"If its operation and effect must necessarily be special, the act is special, whatever may be its form. If, on the other hand, the act has room within its terms to operate upon all of a class of things, present and prospective, and not merely upon one particular thing, or upon a particular class of things existing at the time of its passage, the act is general.' That the question is not one of form is expressly held as necessarily implied in all the cases, and, if this were not so, then the constitution could easily be evaded 'by dressing up special laws in the garb and guise of general statutes'."

Lewis' Sutherland Statutory Construction, 2d ed.,
Sec. 200.

The Act under consideration seems to fully comply with the above definition of a special act. It has no prospective application. It operates solely upon a particular set of facts existant at the time of the passage of the act with no provision to take care of additional cases of the same general class.

Under other laws of the State of Indiana the lien on real estate for taxes attached on the first day of March annually and that lien is not affected or destroyed by any sale or transfer of any such real estate.

Burns' Ind. Stats. Ann. (1933), Secs. 64-2825, 64-103, 64-402.

Yet Section 1 of this Act would leave all of the above sections in force as to all real estate except that described in Section 1, which it relieves from taxation on the sole basis of losing the crops or use of the land during the crop season, wholly ignoring the fact that there is a value belonging to the owner which is escaping taxation.

When I come to a consideration of Section 4, the special character of the legislation clearly appears. It will be noted that it applies only to the owners of real estate within the state and where the real estate was embraced within eminent domain proceedings during the year 1941 and after March 1 thereof. In other words, by the express provisions of the section the cases included relate to cases where the proceeding had not even been started until after the lien of the tax had attached.

Burns' Ind. Stats. Ann. (1933), Secs. 64-2825, 64-103, 64-402.

In this case, in addition to violating the provisions against special legislation in enumerated cases and, in addition to violating Section 1 of Article 10, the legislation violates the fundamental rule which prevents the use of public money for purely private purposes. In the cases referred to in Section 4 the tax had become the personal liability of the owners prior to any proceedings by the government to condemn the land. It seems to me that this must be amply clear. The purchase of real estate after the tax lien has attached by a corporation whose property is exempt does not divest the lien.

Cooley Taxation, 4th ed. Sec. 1239;

State v. Northwestern Tel. Exch. Co. (Minn.), 82
N. W. 1090-92.

And even though this rule would not apply to a sovereign so far as the lien on real estate thus acquired, it would still apply with respect to the personal liability of the owner at the time the tax attached. In other words, tax liability is a personal liability and even though the lien should be unenforceable against a sovereign, the personal liability of the previous owner would undoubtedly remain. See, as to taxes constituting a personal liability against the owner of the property.

Prudential Casualty Co. v. State, 194 Ind. 542 at
p. 550.

In my opinion Chapter 309 of the Acts of 1943 violates both Section 22 of Article 4 and Section 1 of Article 10 of the Indiana Constitution. Having come to this conclusion upon this branch of the case, the remaining questions are immaterial.

STATE BOARD OF ACCOUNTS: Whether Township Trustee may legally buy McDonald's Justice of the Peace Manual for Justices of the Peace under authority to buy supplies.

April 13, 1943.

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

Dear Mr. Jensen:

I am in receipt of your letter dated April 9, 1943, requesting my opinion as to the interpretation to be placed upon the following language contained in Section 64-311 Burns' R. S. 1933, which reads as follows:

"And also the items, severally, to be charged against the township funds, including salaries, clerk hire, when same is necessary, stationery, printing, and records and supplies to be furnished to the justices of the township * * *."