STATE BOARD OF ACCOUNTS: Interpretation of Chapter 251 of the Acts of 1943.

May 4, 1943.

Hon. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge your letter of April 12th, in regard to Chapter 251 of the Acts of 1943 General Assembly, in which you asked the following questions:

> "1. Is the interest on all existing loans to be automatically reduced to 4% annually without any action being taken by the mortgagor?
>
> "2. Is the interest on existing loans to be reduced to 4% annually if the provisions of the act are accepted as provided in section 21 thereof, and if so, from what date will such reduction in interest be effective?
>
> "3. If the mortgagors, or holders of title of properties mortgaged, file with the auditor of the county his or their written acceptance of the terms of the act, as provided in section 21 thereof, does such mortgagor, or holders of title of properties mortgaged, become obligated to comply with the terms of the act that:
>
> > "(a) That the loan shall be repaid in equal monthly, quarterly, semiannual or annual installments?
> >
> > "(b) For the payment of attorney fees in the event of foreclosure?
>
> "4. What effect, if any, would the filing of the written acceptance as provided in section 21 of said act, have if the existing mortgage does not mature and become due and payable for more than three years after June 1, 1943?"

In answering those questions I am guided primarily by two wellknown principles of statutory construction, the first as

set forth in Hopkins v. Jones, 22 Ind. 310, wherein the court said:

> "It is a maxim of the law that statutes must be construed prospectively, unless they plainly import a different intention on the part of the legislature."

See also Chadwick, Treasurer v. City of Crawfordsville, 216 Ind. 399-413 (1939):

> "Unless a contrary intention is expressed, statutes are treated as intended to operate prospectively, and not retrospectively."

The second principle has been set forth in innumerable Indiana cases to the effect that, where there is ambiguity or uncertainty in the language as used by the legislature, it should be given a reasonable construction with the intent of the legislature collected from the whole statute.

State ex rel. v. Markey, 212 Ind. 59 (1937).

Some of the familiar principles of statutory construction, which are particularly applicable to this case, are set forth in

Zoercher v. Indiana Associated Telephone Corporation, 7 N. E. 2d, 282 (1937).

wherein the court says:

> "The purpose of interpretation of statutes is to ascertain the true intent of the Legislature by enacting them. * * * And when the legislative intent is ascertained it must be given effect if it is not violative of the constitution."

Applying those principles to your questions I do not believe, upon reading the whole of Chapter 251, that it was the intent of the Legislature to reduce to 4% all existing school fund loans. The other interpretation of the Act gives it retrospective effect upon existing mortgages. There is nothing in the Act to indicate such an intent.

Your second question presents the problem of interpreting Section 21 of the 1943 Act which reads as follows:

> "All loans of said school funds existing on June 1, 1943, and the mortgages securing the same, are hereby extended for a period of three years from said date, conditional on the mortgagors, or holders of title of properties mortgaged, filing with the auditor of the county his or their written acceptance of the terms of this Act within six months from June 1, 1943. Such extensions of loans shall be made without appraisements of properties, and regardless of appraised or assessed valuations of the same, and without cost to the mortgagors."

In 1933 a similar Act was passed which reduced the then 6% interest on school fund mortgages to 5%. Chapter 118, Acts of 1933. Section 2 of that Act was in substantially identical language with Section 21 of the new Act. Under the 1933 Act the Attorney General prepared and the State Board of Accounts adopted a form for acceptance of the Act. This form provided that the interest rate upon acceptance of the "terms" of the 1933 Act would be reduced from 6% to 5%. Such construction of the 1933 Act remained unquestioned and consequently I am impelled to the conclusion that, when the Legislature in 1943 passed Section 21 in the same terms, the same interpretation must have been intended. A similar proposition is discussed in Zoercher v. Indiana Associated Telephone Corp., *supra,* and the court there says:

> "While, of course, the opinions of the State Tax Board and the Attorney General are not controlling, the practical construction of a statute is influential."

In my opinion, the practical construction of an identical statute should be influential in determining the intent of the Legislature. Consequently, I believe that the Legislature intended that those persons accepting the "terms" of the new act have the benefit of the 4% rate as of June 1st, 1943.

The third question likewise involves construction of Section 21. It will be noted that that section provides for a written acceptance of the "terms" of the Act. What terms are intended is not certain. Obviously, the terms providing for ten, twelve, or fifteen year mortgages could not have been intended nor any other terms which are intended to apply

to new loans only. The term providing for payment in equal installments is found in Section 12 of the Act. Clearly, the first provision of Section 12—that providing for the length of loans—is applicable only to new loans. I am of the opinion that the provision for installments is likewise applicable only to new loans, not only for the reason that it is found in that same section, but also because a practical construction of the Act would not favor payment by installments when the loan is only for three years. It appears to have been the legislative intent to grant a three-year extension to existing mortgagors who wish to take advantage of the 4% rate. The effect of insisting that such mortgages be paid in installments would be that no mortgagor will request an extension but would desire a new mortgage for the longer period of time.

I am, however, of the opinion that all extensions will carry as an incident the requirement the mortgagors pay attorney fees on foreclosures. That opinion is based upon two considerations: The first, that the new Act seems to contemplate foreclosure by court action in all cases. In accord with the spirit of the Act, an interpretation should be given to its terms which will provide for attorneys' fees on judicial foreclosures. Second, Section 21, in providing that the mortgagors shall file with the auditor their "written acceptance of the terms of the act," must contemplate that the mortgagors assume those burdens under the Act which may reasonably be applied to extensions of mortgages. The attorneys' fees provision may well be applied to such extensions.

The obvious and, in my opinion, the soundest construction, of Section 21 is to interpret it as applicable only to those mortgages which can be extended to three years. That construction has the double advantage of being consistent with the rest of the Act, and, at the same time, accurately reflecting the language used. Thus, if the existing mortgage does not mature for more than three years after June 1, 1943, the filing of a written acceptance of the terms of the Act would have no effect upon it, the provisions of Section 21 being thereby limited to mortgages maturing in less than three years after June 1, 1943.