

STATE BOARD OF ACCOUNTS: Dog tax. Whether unpaid tax must be put upon the tax duplicate.

Kennel fees, whether unpaid kennel fees must be placed upon the tax duplicate.

May 22, 1943.

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

Dear Mr. Jensen:

I have your letter inquiring as to whether the last sentence of Section 5, Chapter 113, Acts of 1943, should be construed to include unpaid dog tax as well as kennel license fees. The sentence is:

“The assessor shall assess against each person who failed to pay to such assessor the amount of any such license fee or fees so owing by such person, and the amount of such license fee or fees shall be placed upon the tax duplicate by the county auditor and collected as taxes are collected.”

The question has arisen in view of the fact the section under consideration provides for a “tax” on dogs and a “license fee” for dog kennels. The possibility has been suggested that the words “such license fee or fees” pertain only to kennel license fees and not to dog tax.

To determine the proper interpretation of “such license fee or fees” it is enlightening to read the other sections of the “Dog Tax Law.” Section 16-317, Burns’ 1933 Supplement, is particularly helpful. In it will be found the sentence: “Dogs kept in kennels for breeding, boarding or training purposes or for sale shall not be assessed an *individual license fee* but the owner or keeper shall pay a kennel license fee * * *.” It will be noted the words “individual license fee” were used instead of “individual dog tax.” This would seem to indicate the words are interchangeable. The section further provides that kennels shall be licensed according to a schedule based on the number of dogs. Upon payment of the kennel license fee the dogs are individually “licensed” and tagged.

This would seem to indicate the kennel license fee is but a lump sum arrangement for "licensing" or taxing dogs where several dogs are kept for certain purposes.

Words and Phrases states, in substance, that dog tax should be regarded as a license rather than a tax, where such tax is not based on valuation. In support of this definition several cases are cited, among which is *Kalthoff v. Hendrie*, Supreme Court of Mich. (1882), 12 N. W. 191. In that case the court said:

"This tax is for the particular purpose of raising a fund to pay for depredations committed by dogs, any surplus being paid into the school fund. * * * The validity of this charge was before us in *People v. Van Horn*, 9 N. W. Rep. 246, and we sustained the law as a police regulation. It is rather to be regarded as a license than a tax law, imposed on those who choose to keep animals that have always been regarded as requiring special regulation different from that applied to others."

The Indiana cases, without specifically calling the dog tax a license, are nevertheless in accord with this Michigan decision. In the case of *Finerty, County Auditor vs. State ex rel. School City of Gary*, (1938), 213 Ind. 248, Judge Shake said:

"Statutes of the kind here under consideration are not intended to provide revenue for public purposes, but are an exercise of the police powers of the state for the protection of property."

To support this view he cited two previous Supreme Court cases, *Mitchell v. Williams* (1886), 27 Ind. 62, and *State v. Sharp* (1907), 169 Ind. 128.

Bearing in mind the fact "license fee" is used synonymously with "dog tax" one place in the "Dog Tax Law", along with the fact the "dog tax" is really a license fee, I am of the opinion your question should be answered affirmatively and all unpaid dog taxes, whether for dogs not kept in a kennel or for kennel license fees, should be placed on the tax duplicates by the county auditors.