

Act so as to produce the teacher's share of the annuity provided without favor and without distinction. The problem thus presented is not a legal problem but an actuarial problem to be worked out in a manner consistent with the table of rates as fixed in or according to the rate laid down in the statute.

AUDITOR OF STATE: Sale of island in Wabash River at Lafayette—procedure for making conveyance.

August 13, 1941.

Hon. Richard T. James,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. James:

I have before me your letter requesting an official opinion as to what statute, if any, governs the sale or giving of title by the Auditor of State to an island formed in the Wabash River at LaFayette, Indiana, since 1913. You state that Mr. Frank McCoy of LaFayette has lived on the island since May, 1940; that the island began to form shortly after the 1913 flood and has continued to increase in size until, at the present time, it contains five acres. The island is located just south of the railroad bridge which crosses from LaFayette, Indiana, to West LaFayette.

Assuming that the Wabash River at the point indicated, is navigable, the island thus formed belongs to the State of Indiana. I quote from Thompson on Real Property, Vol. 5, page 302, as follows:

“Islands formed in navigable rivers and lakes do not belong to the shore owners, but to the owner of the bed of the river or lake, ordinarily the state.”

Also from Vol. 1, page 125, of Thompson on Real Property, note the following language:

“Generally, in this country, the ownership of lands covered by navigable streams is regarded as resting in the state.”

See also Opinions of the Attorney General, 1933, page 538, et seq., where the question is discussed and a number of authorities collected.

The ownership of land thus formed is not, strictly speaking, a private ownership of the State but is an ownership in trust for the whole people of the State, and it has been held that such property cannot be sold except as to parcels which can be disposed of without detriment to the public interest in the lands and waters remaining. Note the language of the Court in the case of *Illinois Central Railroad v. Illinois*, 146 U. S., 387 at p. 455, where the Court says, referring to such lands:

“The trust with which they are held, therefore, is governmental and cannot be alienated, except in those instances mentioned of parcels used in the improvement of the interest thus held, or when parcels can be disposed of without detriment to the public interest in the lands and waters remaining.”

See also *Lake Land Company, et al. v. State of Indiana*, ex rel., 68 Ind. App. 439.

I call attention to the above cases because there may be some doubt as to whether the State can give an indefeasible fee simple title to such land. If it can, it would have to be upon the basis that it can do so on the theory that such island “can be disposed of without detriment to the public interest in the lands and water remaining.”

I pass now to the procedure for the sale of State lands, which is set out in Sections 62-206 to 62-216, inclusive, of Burns Indiana Statutes Annotated 1933. These sections provide the procedure except in special cases, which do not apply to the present situation. It will be noted from an examination of Section 62-206 that the first step is the preparation of maps and plats, as follows:

“It shall be the duty of the auditor of state to cause to be prepared maps and plats of * * * or any other lands belonging to the state and not set apart by law for state purposes, lying within the bounds of each county of the state, separately, showing the township, range, section and parts of sections, together with the numbers of each, which maps or plats, with duplicates thereof, he shall forward to the several county audi-

tors in which said lands may lie, immediately upon the completion thereof."

The next sentence of the above section makes it the duty of the Auditor of State to cause such lands to be sold.

Section 62-207 of Burns' Indiana Statutes Annotated, 1933, requires the county auditor where the land is situated, to have the same appraised. Section 62-208 provides for registering such lands, which is to be done by the Auditor of State. The next section provides the procedure for sale upon the petition of five (5) resident freeholders and voters of the county where the land lies. Section 62-212 makes it the duty of the Auditor of State to rent such land owned by the State until the same is sold or otherwise disposed of. Section 62-216 expressly authorizes and directs the Auditor of State to sell, under the provisions and conditions set out in the several sections already referred to

"* * * all lands of the state upon which there is no public building, or which is not in actual use by any of the institutions of this state, or which has not been set apart by law for state purposes, the proceeds thereof to be paid into the general fund in the treasury of state * * *"

it being provided, however, that the square known as University Square in Indianapolis, shall not be sold under the provisions of this Act.

I have not copied at length from the various sections referred to since they are all available to you, and outline very fully the procedure to follow.

PUBLIC INSTRUCTION: Whether the free text book law applies to parochial schools.

August 14, 1941.

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

Dear Sir:

I have before me your letter of August 6, 1941, in which you ask for an official opinion upon the following question: