diately following the appropriation for vocational rehabilitation, which may easily refer to the appropriation for Unemployment Compensation as well as to vocational rehabilitation.

In addition to the above there is the provision on page 626 of the Acts of 1941 that:

> "The appropriation herein made includes an authorization for the expenditure of any federal funds received for the above purposes, * * *"

so that since the funds for Unemployment Compensation are all furnished by the Federal Government, the clear implication of the above language is that if a larger sum than that specifically appropriated is furnished by the Federal Government all of the funds thus furnished are available for expenditure by the department. It seems to me that the last above quoted language makes it very clear that the appropriation made furnishes authority to expend all funds furnished by the Federal Government for the purpose for which it is furnished.

In my opinion, therefore, the specific appropriations in each case referred to by you may be enlarged under the conditions herein set out. The proper procedure is to make application to the Budget Committee, if the situation is as stated by you. This applies especially to the Employment Service appropriation.

As to the Unemployment Compensation appropriation where all funds are payable out of sums received from the Federal Government, it appears to me that authority exists for the expenditure of all funds furnished by the government notwithstanding the specific appropriation.

BOARD OF ACCOUNTS: Delinquent Tax Sales—Construction of 1941 Act.

September 5, 1941.

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

Dear Mr. Jensen:

I have before me your letter calling attention to Chapter 224 of the Acts of 1941 and submitting ten separate questions

relating thereto which you desire to have answered officially. The first question is as follows:

> "(1). Does Section 2 of Chapter 224 of the Acts of 1941, page 714, provide for and require three separate classes of tax sales, with different provisions for redemption?
>
> (a) For sale of real estate with installment of tax delinquent for fifteen months or more, and not previously offered for sale?
>
> (b) For sale of real estate which has been advertised and offered for sale for any two years or more, and remaining unsold?
>
> (c) For sale of real estate upon which taxes have been unpaid and delinquent for five or more years, at the time of the passage of this act?"

Section 2 of Chapter 224 of the Acts of 1941 is an amendment of Section 260 of the Tax Act of 1919 as the same was amended in 1931. This section is rather long and rather than copy it in full in this opinion, I shall attempt to analyze the same. It will be noted that the section provides that no real estate shall be sold for the purpose of collecting delinquent taxes until fifteen months after the delinquency has occurred; providing, however, that when the time for sale under the Act is reached, the real estate shall be sold for not only the taxes which are delinquent, but for all taxes then a lien against the real estate. It is stated that the real estate shall be sold by the County Treasurer at public sale as now provided by law, except that it shall be unnecessary for the county treasurer to first levy upon personal property or to attempt to collect such real estate taxes out of personal property; providing also that no personal property tax delinquency shall be included in the sale of real estate for delinquent taxes. It is also provided that the sale, when made, shall be for the entire description advertised and shall be free and clear of all taxes or other encumbrances.

It is next provided that whenever real estate has been advertised and offered for sale for delinquent taxes for any two years or more, if no one bids a sum equal to the delinquent taxes thereon prior to the first Monday of December of the year when the last offer was made, the Auditor is required to

bid it in for a sum equal to the amount of the delinquent taxes, the same to be held in trust by the county for all of the tax levying bodies that have levied and certified such taxes as their interest shall appear.

It is next provided for the sale of real estate upon which taxes have remained unpaid and delinquent for five or more years, and a separate procedure is set up for the sale of such real estate. As to this particular class the time from which the five years are counted is the time of the passage of the Act. It appears, therefore, that this class is fully established and identified on this basis as being any real estate which, at the time of the passage of the Act, had been delinquent for five or more years. There does, therefore, appear to be three different situations calling for a somewhat different procedure. The first of those situations includes sales where the offer is being made for the first time after a period of fifteen months has elapsed from the time when the first installment to become delinquent became delinquent. The procedure there, with the variations which I have pointed out, is described in the language taken from the body of the section—"as now provided by law." That language would undoubtedly comprehend the time of sale, and the general type of notice as to publication and posting, except as the same has been changed by the section under consideration and as already noted.

The second offer is undoubtedly of the same kind, so far as I can see, except that one new factor enters in the bringing about of a forced sale to the county if no one offers a sum equal to the delinquent taxes prior to the first Monday of December of the year when the second offer is made.

In considering that there are three differing situations I have treated this second offer as a second situation although, as we will hereafter show, the procedure for sale is not different from the procedure for the sale when first offered. The difference between the two is the difference in the method of redemption and period of redemption as applied to cases where property is bought in by the county, in which case the provision of Section 3 of Chapter 224 of the Acts of 1941, applies.

Before passing to the third situation, I desire to consider briefly the applicable statute as to redemption from sales made on the first offer and also made on the second offer where the purchaser is anyone other than the county auditor. In my opinion, the applicable statute governing the subject of redemption in such cases is Burns' Indiana Statutes Annotated

1933, Section 64-2301, except as provided in a limited number of cases under Chapter 153 of the Acts of 1939. The above Section 64-2301, *supra*, has not been expressly repealed and I think can readily be harmonized with the provisions of Chapter 224 of the Acts of 1941, *supra*, so as to allow both to stand.

The third situation is the one where taxes upon real estate, at the time of the passage of Chapter 224 of the Acts of 1941, are unpaid and delinquent for five or more years. Such property is directed to be sold, subject to redemption within a six-months' period when bought by anyone other than the county auditor. There is no second offer of this class but, if no bid is received on the day fixed for sale, the sale is to be continued from day to day until the first Monday of December of the year when the offer is made when so much as remains unsold is to be bid in by the auditor of the county. The result of this discussion is that, in my opinion, your question and all parts thereof, should be answered in the affirmative, with this one exception, viz., I think as to your question (1) (b), the procedure is actually the same as in (1) (a), and the redemption is the same excepting as to cases where the county auditor has bid the property in.

Your second question is as follows:

> "(2). Does the law require a separate publication of notice of each class of sale which may be required or may two or more classes of sales be combined into and published as one notice?"

I do not think the Act in and of itself requires three separate publications of notice, but I think the notice should be so drawn as to identify the property in Class (1) (a), in Class (1) (b) and in Class (1) (c) referring to your previous question.

Your third question is as follows:

> "(3). Do the provisions of Section 2 of Chapter 224 of the Acts of 1941, page 714, to wit: 'The notice of sale shall be sufficient if it contains the name of the fee simple owner or the persons shown on the tax duplicate as owners, and if it contains description of the real estate from which the same may be identified,' apply to the sale or sales indicated in question No. 1?"

The answer to this question is clearly in the affirmative. Your fourth question is as follows:

> "(4). Does the law require that the description of real estate sold at tax sale as the same is shown in the notice of sale, in the certificate of sale and in the tax deed to be the same as the description of such real estate as entered on the tax duplicate?"

I think the answer to this question is in the affirmative. The lien, to satisfy which the sale is made, is established by the auditor's books and the entries thereon made. It can neither be increased nor diminished by the notice of sale, the certificates of sale or by the deed. If the description is incorrect it should be corrected pursuant to the provisions of Chapter 224, *supra,* and this correction should be made prior to the notice of sale.

Your fifth question is as follows:

> "(5). In the event that the description of real estate as entered on the tax duplicate is found to be inadequate to identify the same, would the auditor be authorized to correct such description in preparing the list of lots and lands returned delinquent without first correcting such description on the tax duplicate?"

I do not think a correct notice can rectify an error in the lien itself which must appear of record on the auditor's books. I suppose it make no particular difference as to the order in which the correction is made, but the description on the tax duplicate should be corrected before notice is given and preferably before the last taxpaying period preceding the sale.

Your sixth question is as follows:

> "(6). Does Section 1 of Chapter 224 of the Acts of 1941, page 714, authorize the auditor to correct the description of real estate as entered on the tax duplicate at any time before the publication of notice of sale of any such real estate returned delinquent?"

The answer to this question is in the affirmative. See Acts of 1941, page 714, which expressly authorizes the county auditor to correct errors in the description of property.

Your seventh question is as follows:

> "(7). Does Section 2 of Chapter 224 of the Acts of 1941, page 714, require the auditor on the first Monday of December, 1941, to bid in on behalf of the county all real estate advertised and offered for sale in April, 1941, and remaining unsold on said first Monday of December?"

Your question is not sufficiently definite to enable me to give a categorical answer. If the first offer was made in April, 1941, the answer clearly would be in the negative. If the April, 1941, offer were the second or more offer then it would fulfill the requirements indicated in your question (1) (b).

Your eighth question is as follows:

> "(8). In the event that the auditor finds that the description of real estate as advertised for tax sale is not sufficient to convey title, would the auditor be authorized to decide that it was not advisable to bid on behalf of the county on the first Monday in December?"

The language of the statutes on the subject of the auditor's duty to buy in land is mandatory; and I find nothing in the Act upon which to base a conclusion that the auditor is vested with any discretion in the matter.

Your ninth question is as follows:

> "(9). Is the county prohibited from purchasing real estate advertised for sale in 1942, until the first Monday in December, or does the provision 'any county which has a tax lien on any lot or land being sold as herein provided, may purchase the same at such sale,' authorize the purchase by the county at any time after advertisement and prior to the first Monday in December?"

This question doubtless grows out of the provision contained in the last two sentences of Section 2 of Chapter 224 of the Acts of 1941, which read as follows:

> "Any county which has a tax lien or any other right, interest or ownership in any lot or land being sold as

herein provided may purchase the same at such sale. The county shall not be required to pay cash, but upon the resale thereof by such county it shall pay the county treasurer who shall distribute the same among the several subdivisions of government in the manner as provided in this act."

Acts of 1941, p. 718.

It seems to me that the language above quoted plainly authorizes any county having a tax lien, or any other right, interest or ownership in any lot being sold for taxes, to purchase the same at such sale in the same manner as any other purchaser. It is not quite clear as to just what officer must exercise this authority, but I think if exercised at all, it would have to be exercised by the Auditor upon the authority of the Board of Commissioners.

Your tenth question is as follows:

"(10). In computing the amount of delinquent tax to be included in any sale of real estate for delinquent tax should such computation include the amount of any such tax which became delinquent ten or more years prior to the first Monday of May next preceding the date of such sale?"

This question arises because of the provisions of Section 64-2825 of Burns' Indiana Statutes Annotated 1933, which provides as follows:

"The lien of the state for all taxes for state, county, school, road, township and all other purposes, and all taxes for city, town or municipal purposes, shall attach on all real estate on the first day of March annually; and such lien on real estate for all taxes due from the owner thereof, which have been heretofore placed in the tax duplicate or which have heretofore accrued or which shall accrue or attach on or before the first day of March, 1919, with interest and penalties in each case, shall continue for ten (10) years from and after the first Monday in May, 1920, and no longer, unless already sold for taxes, and such lien on real estate for all such taxes as shall attach or accrue or become due from the owner thereof from and after

> the first day of March, 1919, with the interest and penalties in each case, shall continue for ten (10) years from and after the first Monday in May in each year in which such taxes become due and payable according to law, and no longer, unless already sold for taxes; which lien shall in nowise be affected or destroyed by any sale or transfer of any such real estate: Provided, That in any case where any suit, action or other proceeding is instituted by proper authority for the collection of any such taxes or the enforcement of any such lien on real estate, at any time within said ten (10) years' limitation, but has not been completed, said ten (10) years' limitation shall be extended until the final termination and completion of any such suit, action or other proceeding: Provided, further, That no amount of taxes dropped from the tax duplicate, as provided for in this act, shall be a lien against any property in the hands of a bona fide purchaser without actual notice thereof while such taxes so remain dropped from the tax duplicate."

This section has not been expressly repealed, and I find no such inconsistency between it and Chapter 224 of the Acts of 1941 to justify the conclusion that it was impliedly repealed by said Chapter 224, *supra*. It is said with reference to the first offer that the real estate shall be sold for the purpose of collecting "all taxes then a *lien* against such real estate." The language applicable to the second offer, and also the language as applied to the sale on account of a five or more year delinquency, contains no such limiting language; but owing to the rule holding implied repeal in disfavor, I am inclined to think that the limitation as contained in the first offer to the effect that the sale is for the collection of taxes "then a lien" should be held to apply to the other classes of sales. In other words, I think the sale, in all cases, is not intended to include taxes, the lien of which has been lost by virtue of the provisions of Section 64-2825, *supra*.