

“Any field examiner upon retirement may elect to receive in lieu of benefits to which he otherwise would be entitled, a joint and last survivor income, the amount of which shall be the equivalent according to current actuarial tables selected by the board and approved by the Insurance Department.”

11 Burns' Indiana Statutes Annotated, 1941
Cumulative Supp., 60-247.

I must respond to your question in the affirmative. A field auditor eligible to retirement under the provisions of the 1941 Act who desires to make the election provided for by Section 7 must make such an election at or before the date of his retirement.

BOARD OF ACCOUNTS: Taxation: Whether the owner of real estate may redeem from a tax sale prior to the issuance of a deed and after the two years set up in the statute.

October 14, 1941.

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

Dear Sir:

I have before me your letter in which you request an official opinion in answer to the following questions:

“Does the owner of real estate sold for taxes or other persons having an interest therein have a right to redeem the same by making proper payment to the county after the expiration of two years from the date of sale and before a deed has been issued to the purchaser, or his assigns?”

In the consideration of this question I desire to call your attention, first of all, to Section 64-2301 of Burns' Indiana Statutes Annotated, 1933, which reads as follows:

“The owner or occupant of any land sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two (2) years next ensuing, in the following manner: If redeemed within six (6) months from day of sale, he shall pay to the country treasurer, for the use of the purchaser, his heirs or assigns, the full sum of the purchase-money named in his certificate, and all the costs of sale, together with ten (10) per cent in addition; if redeemed after six (6) months and within one (1) year, he shall pay, in like manner, the purchase-money, together with costs and fifteen (15) per cent in addition; if redeemed after one (1) year and within two (2) years, he shall pay, in like manner, the purchase-money, together with costs and twenty-five (25) per cent in addition, and he shall also pay all taxes which have been paid thereon, with interest at the rate of six (6) per cent per annum on such taxes, and, in case the party purchasing the land, or his assigns, fails to take a tax deed for the lands so purchased within six (6) months after the expiration of the two (2) years, no interest shall be charged or collected from the redemptioner after that time.”

Burns' Indiana Statutes Annotated, 1933, Section 64-2301.

In connection with this section I desire to call your attention also to Section 64-2401 of Burns' Indiana Statutes Annotated, 1933, providing that if no person shall redeem the land sold for delinquent taxes within two years from the date of sale the purchaser or his assigns, shall at the expiration of said two-year period upon production of the certificate of purchase be entitled to a deed, making it the duty of the Auditor upon such condition to issue such a deed.

Burns' Indiana Statutes Annotated, 1933, Section 64-2401.

I desire also in this connection to call your attention to Section 64-2403 of Burns' Indiana Statutes Annotated, 1933, making it the duty of the purchaser at a delinquent tax sale to secure his deed within four (4) years from the date of sale and, upon

failure so to do, the amount due the purchaser or his assigns, shall cease to be a lien on lands so purchased.

Burns' Indiana Statutes Annotated, 1933, Section 64-2403.

From a consideration of these sections it seems to be clear that if no redemption has been made within the two-year period above referred to, the purchaser or his assigns by producing a certificate of purchase is entitled to a deed, and after a deed has been issued under such circumstances, no redemption can thereafter be made. However, it is clear that affirmative action must be taken by the purchaser before a deed can be issued. In other words, it is not made the duty of the Auditor to issue a deed at the expiration of the two-year period except upon the contingency that no redemption has taken place and that the purchaser or his assigns has produced a certificate and asked for the deed. The purchaser does not receive a deed as a matter of course. He receives it, if at all, upon the presentation of his certificate at the expiration of the two-year period for redemption and on the condition that no redemption has taken place, and he must produce the certificate within four years from the sale to preserve his lien.

Your question is as to what happens to the right of redemption if the certificate of purchase is not produced at the expiration of two years. In my opinion, the right to redeem still exists until the certificate of purchase has been produced to the Auditor with the request for the issuance of the deed. I base this conclusion upon the following language concluding Section 64-2301, already fully set out herein. Note the following:

"* * * if redeemed after one (1) year and within two (2) years, he shall pay, in like manner, the purchase-money, together with costs and twenty-five (25) per cent in addition, and he shall also pay all taxes which have been paid thereon, with interest at the rate of six (6) per cent per annum on such taxes, and, in case the party purchasing the land, or his assigns, fails to take a tax deed for the lands so purchased within six (6) months after the expiration of the two (2) years, no interest shall be charged or collected from the redemptioner after that time."

Clearly this language implies the possibility that the redemption might be made up to two years and six months after the sale at any rate, because the redemptioner must pay interest on taxes if the redemption is made at any time within such two years and six months. By the same process I think it must be held that redemption may take place even after the two years and six months because there is the express provision that if the purchaser has not presented his certificate within that time the redemptioner is not obliged to pay interest on taxes after that time.

Construing all of the above provisions together, the following conclusions seem to me to be proper:

1. Section 64-2401, *supra*, gives the absolute right to the purchaser or his assigns, to have a deed at the expiration of two years from the date of sale if no redemption has been made, and if such purchaser, or his assigns, shall present his certificate and demand the deed.

2. If the purchaser, or his assigns, fails to present his certificate of purchase at the above time, the owner continues to have the right of redemption upon the terms set out in the statute until such a request for a deed has been made.

Your question is answered in the affirmative.

BUREAU OF MOTOR VEHICLES: Whether transfer fees and title fees may be carried in one account on the books of the Bureau.

October 17, 1941.

Mr. Harry A. Sharp,
Administrator,
Bureau of Motor Vehicles,
Indianapolis, Indiana.

Dear Sir:

You have asked whether or not the revenue designated as "Title fees" and that designated as "Transfer fees" may be carried in one account on the books of your Bureau and of the Auditor of State. By your designation of "Title fees" I understand that you mean the fees authorized by Sec. 47-301 Burns Ind. St. 1940 Repl. whereby a charge of 50c is authorized for the original certificate of title.

This statute was first passed in 1921 and was thereafter