

13856, *supra*, applies, and requires such institutions' printing to be executed through the board of public printing subject to the provision in section 3 of chapter 165 quoted above. As applying to other funds, I am unable to give an opinion without more definite information than the information contained in your letter.

I desire to call your attention, however, to the fact that section 3 of chapter 165 of the Acts of 1933 expressly provides "that the boards of trustees of the state's educational institutions may, if they so elect, enter into separate contracts *with the approval of the board of public printing* for their necessary printing, binding, stationery and supplies based upon the specifications as prepared by said board." (Our italics.)

ACCOUNTS, BOARD OF: Construction of provisions of section 5, chapter 65, Acts of 1932, same being an act concerning taxation.

July 19, 1933.

Hon. William P. Cosgrove,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an interpretation of certain provisions of section 5 of chapter 65 of the Acts of 1932.

Chapter 65, is an act entitled "An act concerning taxation". Section 1 of the act provides in part that:

"The taxes for the year 1931 and each year thereafter charged against any taxpayer on the tax duplicate in the hands of a county treasurer in the State of Indiana shall be due and payable in two equal installments on or before the first Monday in May and the first Monday in November, respectively."

The section further provides:

"If any installment of taxes shall not be paid when the same shall be due such installment shall be returned delinquent, and a penalty of three per cent on the amount of such installment shall be added thereto."

The section further provides that:

“In addition to the penalty of three per cent herein provided, interest at the rate of eight per cent per annum on the amount of such installment from the date of such delinquency to the time of payment, shall be charged and paid or collected with such delinquent installment and penalty in the manner provided by law for the collection of delinquent taxes;” * * *

Section 2 of the act provides for a limited moratorium in the sale of real estate for the collection of delinquent taxes.

Section 3 of the act provides, among other things, for the application of the provisions of section 1 to taxes which shall have been returned delinquent by a county treasurer after the first Monday in May, 1932.

Section 4 of the act sets out the duties of the county treasurer in the collection of delinquent taxes.

Section 5 of the act provides in part as follows:

“The taxes, penalties, interest, fees, and charges paid or collected under the provisions of this act shall, except as otherwise hereinafter provided, belong to and be the property of the several taxing units for which any or all of the same were collected, and shall be distributed accordingly; PROVIDED, THE TREASURER SHALL BE ALLOWED, IN ADDITION TO HIS SALARY AS PROVIDED BY LAW, A COMMISSION OF THREE PER CENT UPON ALL DELINQUENT TAXES COLLECTED BY HIM, and one-half of all fees collected by him on account of delinquent taxes; but it shall be unlawful for any such treasurer, his deputy or assistant, to retain, receive or accept any commission, penalty, interest, fee, costs or charge or part thereof for his own use in addition to or in excess of the amounts herein provided.” (Our italics and capitals.)

The language in italics and capitals, *supra*, is the particular language concerning which you desire an interpretation, the question being: Upon what is the treasurer’s commission based? To illustrate the specific question, you state the following example:

“A taxpayer let his fall installment of taxes, in the sum of \$100.00, due the first Monday of November, go

delinquent. He pays same the first Monday in May, 1933. The treasurer collects the tax of \$100.00, penalty of \$3.00 and interest of \$4.12, a total of \$107.12. Does the treasurer get three per cent commission on \$100.00, \$103.00, or on \$107.12?"

The specific language of the statute is that:

"The treasurer shall be allowed * * * a commission of 3 per cent upon all delinquent taxes collected by him."

Except for the fact that the question has been raised, and the apparent different uses of the term "delinquent taxes" in other parts of the act, I think the above language is unambiguous. The delinquent tax in the example stated by you, as the term is ordinarily used, is one hundred (\$100.00) dollars, and the ambiguity arises solely from the conflicting uses of the term in other portions of the act. In some parts of the act the term "delinquent taxes" is clearly used in the sense of the installment or installments which are past due, as distinguished from penalty and interest. For example, in section 1, there appears the following language:

"upon the payment of any such delinquent taxes, penalty, interest, costs and/or charges," * * *.

Again in section 3, note the following language:

"Any treasurer who shall have collected delinquent taxes for the year 1931 at any time prior to the taking effect of this act shall be entitled to retain or to receive that portion of such delinquent taxes, penalty, charges and costs which he is now under the law permitted to retain or to receive as his own" * * *.

Again in section 4, there appears the following language:

"After the first Monday in November of each year hereafter, the treasurer in each county shall make one demand by registered United States mail or by call, either in person, or by deputy, upon every person named in the tax duplicate who resides in the county, and who has not paid the taxes charged against him upon such duplicate, for the amount of such delinquent

taxes, interest and the penalty thereon, together with the costs of such demand * * *.”

Again in the same section, is the language:

“In case such delinquent taxes, interest, penalty and costs are paid on demand” * * *.

On the other hand, section 4, in dealing with the duty of the county treasurer in the collection of delinquent taxes from non-residents, and also in limiting the treasurer as to the sale of household goods for delinquent taxes, uses the term “delinquent taxes” without the use of the language “penalty, interest and costs and/or charges” or similar phrases as they occur in the preceding quotations.

All that can be said with reference to the ambiguity created by the above discrepancies, is that the discrepancies emphasize the fact that the term “delinquent taxes” in its ordinary and usual sense does not include the penalty or interest, since otherwise there would be no necessity of repeating the words “penalty” and “interest” so frequently. In addition to the foregoing, is the rule of construction which requires a strict construction of acts concerning the fees of public officers. It is provided by statute in this state that words and phrases shall be taken in their plain or ordinary and usual sense. (Burns Annotated Indiana Statutes of 1926, section 247.)

I am advised that as a matter of departmental construction, the commission of 6 per cent upon all delinquent taxes collected by county treasurers, as provided in section 7332 of Burns Annotated Indiana Statutes of 1914 has, heretofore, been allowed upon the basis of the delinquent tax plus penalty, and in most instances plus interest, and that fact is entitled to consideration in the construction of the present act of 1932. However, upon deliberate consideration of the provisions of section 5 of the act of 1932, *supra*, I am persuaded that the term “delinquent taxes” should be given its plain and ordinary meaning, and when that is done that the term does not include any item other than the delinquent installment or installments.

In my opinion, the treasurer’s commission of 3 per cent as provided in section 5 of chapter 65, *supra*, should be computed on the delinquent installment or installments before the addition of the penalty and interest.