FINANCIAL INSTITUTIONS, DEPARTMENT OF: Mortgages, expiration of lien of; whether partial payments operate to extend lien.

September 29, 1936.

Hon. E. H. DeHority,
Bank Supervisor,
Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion as to whether Section 1 of Chapter 8 of the Acts of 1917 is now in force. It is not in force as therein written, having been superseded by an amendment enacted in 1923. The amended Section, which is now in force, is as follows:

"The lien of all mortgages and vendors' liens upon real estate in this state shall cease and expire twenty (20) years from the time the last instalment of the debt secured by such mortgage or vendor's lien becomes due as shown by the record thereof. No action shall be brought or maintained in the courts of this state to foreclose any mortgage or enforce the lien of any vendor's liens, reserved by any grantor to secure the payment of any notes or other obligations therein described, under the laws of this state, when the last instalment of the debt secured by such mortgage or lien, as shown by the record thereof, has been due more than twenty (20) years. If the record of such mortgage or lien does not show when the debt thereby secured becomes due, the lien of such mortgage or vendor's lien and in the event that the date has been omitted in said mortgage (or lien), the lien of such mortgage (or lien), shall cease and expire twenty (20) years from the date of such mortgage, or lien is recorded, upon the real estate therein described shall cease and expire twenty (20) years from the date of such mortgage or lien and thereafter upon request of the owner or owners of record of such real estate the recorder of the county in which such real estate is situated shall certify across the face of such record that such mortgage or lien is fully paid and satisfied by lapse of time.
and such real estate is released from the lien thereof. Burns Indiana Statutes Annotated (1933), Section 2-617.

In view of the provisions above set out, even though not in language exactly identical with Section 1 of Chapter 8 of the Acts of 1917, your further questions are, doubtless, pertinent. They are as follows:

"1. Is a county recorder authorized to release liens of record without a request from the owner or owners of record of such real estate described in the lien?

"2. Does a payment of interest or principal on a real estate mortgage indebtedness automatically extend the time referred to in this particular Act to twenty years from the date of the last payment on principal or interest of a mortgage?"

Both questions are answered in the negative. However, the negative answer to the first question is of no real importance since the lien actually does expire unless steps are taken to renew it.

ELECTIONS: Right of Deputy Clerk to receive additional compensation as assistant to Board of Election Commissioners (Right of Board of (General) Election Commissioners to employ assistants or clerks.)

September 30, 1936.

Hon. Wm. P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter submitting the following question:

"Is a deputy or employee in the office of the Clerk of the Circuit Court, who is on a regular monthly salary, entitled to receive and retain extra compensation for services performed for the Board of Election Commissioners?"