

**ACCOUNTS, STATE BOARD OF: Barrett Law Bonds, construction of Ch. 317 of Acts of 1935 with respect to delinquency penalty.**

January 6, 1937.

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

Dear Sir:

I have before me your request for an official opinion with respect to the interpretation of certain parts of section 2 of chapter 317 of the Acts of 1935 concerning the collection of delinquent Barrett Law Assessments.

Your question is as follows:

“If an installment or assessment was delinquent prior to the taking effect of chapter 317, Acts of 1935, and if such delinquency was not paid until after the year of exemption from penalty had elapsed, should a 6 per cent or 10 per cent penalty be collected?”

The material part of the section in the consideration of the above question is as follows:

“\* \* \* When any person defaults in the payment of any installment of principal or interest of any such assessments, it shall be the duty of the treasurer to mail notice of such delinquency to such person, who shall have thirty days from the date when the same shall be payable to pay such delinquency. In every case where payment is made after delinquency, there shall be collected interest at the rate of six per cent per annum on the whole amount delinquent from the date when such payment should have been made to the date when actually paid, together with a penalty of 6 per cent. SUCH PENALTY WHICH SHALL HAVE ACCRUED ON AND ATTACHED TO SUCH ASSESSMENT OR ASSESSMENTS AND/OR INSTALLMENT OR INSTALLMENTS PRIOR TO THE TAKING EFFECT OF THIS ACT ARE HEREBY EXPRESSLY FORGIVEN, WAIVED AND CANCELLED: *Provided, however,* THAT SUCH INSTALLMENT OR INSTALLMENTS ON WHICH SUCH PENALTY HAS ATTACHED OR ACCRUED

SHALL BE PAID WITH ALL INTEREST DUE THEREON WITHIN A PERIOD OF ONE YEAR FROM THE DATE OF THE TAKING EFFECT OF THIS ACT. Such penalty shall not accrue on nor attach to such assessments, installment or installments, thereof for the period of one year immediately following and subsequent to the date of the taking effect of said Act." (Our capitals.)

Acts of 1935, page 1527.

The section of the Act of which the above is an amendment provided for a 10 per cent penalty instead of a 6 per cent penalty in case of delinquency.

The portion of this quotation which I have placed in capitals is the part thereof which is of particular significance in the matter under consideration. As stated by the court in *Murray v. Gault*, 179 Ind. 658 (1913) at page 665—"A review of Indiana statutes shows that the proviso is a favorite of our legislators." Moreover, even the most superficial examination of them reveals the fact that in the construction of statutes they must be accorded a use, in many instances, in addition to their ordinary use in order to give effect to the obvious intent of the legislature. As said by the court in *State v. Barrett*, 172 Ind. 169, at page 175,

"\* \* \* We are required as a primary rule of construction to put ourselves in the position of the legislature in the enactment of statutes, and endeavor to arrive at its intention. Provisos and exceptions are similar. They are intended to restrain the enacting clause, to except something which would otherwise be within it, something engrafted upon a preceding enactment, intended to take special cases out of a general class, and the general intent and purpose of an enacting clause will be controlled by the particular intent subsequently expressed."

In the case under consideration, the proviso seems to be intended to express a condition upon which the provision immediately preceding it depends for its effectiveness. If it does not have that purpose, it is difficult to find any purpose for it; and according to well settled rules of statutory construction, I am required to give all the language of a statute effect and to reject none of it, if it is possible to do so, consistent with a reasonable legislative intent.

Morrison v. State, ex rel., 181 Ind. 544 at page 549;

Cox v. Timm, 182 Ind. 7 at page 15.

If the meaning above suggested be given to the proviso in this case, all of the language of the section involved in your question can be given effect so as to make obvious a reasonable legislative intent which is:

1. To provide a period of one year after the effective date of the Act when no penalty shall be collected on account of delinquencies occurring after the effective date of the Act.

2. As to cases where the penalty of 10 per cent provided by the previous Act had already attached, to allow the same period of one year to pay the delinquency without the penalty, which was accomplished by the forgiveness, waiving and cancelling of the penalty if the delinquency should be paid during that year.

3. To provide for a 6 per cent penalty on all future delinquencies after the passage of the Act which were not paid during that one year period above referred to.

I think the waiver of the 10 per cent penalty which had already accrued under the previous Act was conditioned upon payment of the past due installment with interest within one year. If that is not done, the old penalty is in effect. The answer to your question is that the 10 per cent penalty should be collected.

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**ACCOUNTS, STATE BOARD OF: Barrett Law—authority of Officer in charge of prepayment funds to exchange bonds in which same is invested for other Barrett Law Bonds.**

January 6, 1937.

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

Dear Sir:

I have before me your letter referring to that part of section 48-4404 of Burns Indiana Statutes Annotated (1933) which provides for the investment of funds received by cities from the pre-payment of Barrett Law Assessments by per-