

**ACCOUNTS, STATE BOARD OF: School fund mortgages,
right of county auditor to waive priority of such mort-
gages in favor of mortgages taken by Disaster Loan
Corporation.**

April 9, 1937.

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

Dear Sir:

I have before me your letter reading in part as follows:

"In the flood district in southern Indiana, certain owners of property which has been mortgaged to the school fund have made application to the Disaster Loan Corporation for a loan. In one particular case the Disaster Loan Corporation has approved a loan upon the condition that the county auditor executes a 'Standby Agreement' and a 'Mortgagee's Consent' on the enclosed forms."

You submit the following question:

"Does the county auditor have authority to execute such forms on behalf of the school fund of the State of Indiana?"

I think this question must be answered in the negative. The effect of the instruments, to which you refer in your letter, is to subordinate the school fund mortgage to the mortgage given to the Disaster Loan Corporation.

The statutes governing the county auditor with respect to the loaning of school funds very clearly contemplates that the security for the school fund loan is to be prior to all other encumbrances. The auditor in making such a loan is required to inform himself of the value of the real estate and be satisfied of the validity of the title; and the persons applying for a loan are required to produce to the auditor title papers showing to his satisfaction a good and sufficient title in fee simple without encumbrance, not derived from sale for taxes.

Burns Ind. Stat., Anno. (1933), Sec. 28-209.

The applicant is also required to file with the auditor of the county the certificate of the clerk and recorder of the county that there is no encumbrance on the land offered as a security for a loan in either of said offices.

Burns Ind. Stat., Anno. (1933), Sec. 28-210.

The applicant is required to make oath that there is no encumbrance or better claim that he knows of and that the abstract of title presented by him is, as he believes, a true one.

Burns Ind. Stat., Anno. (1933), Sec. 28-211.

The statutes of the State expressly provide further, that "mortgages taken for such loans of school funds shall have priority over all mortgages or conveyances which are not recorded previously to the recording of such school fund mortgages in the county in which the land lies and over all other liens not incurred or not appearing of record prior to such recording."

Burns Ind. Stat., Anno. (1933), Sec. 28-234.

The statutes are also very clear in setting out the duties of the auditor in case of default in the payment of principal or interest.

Burns Ind. Stat., Anno. (1933), Secs. 28-240 and 28-241.

In view of the above provisions of the statutes and in the absence of some express statutory authority, authorizing the auditor to execute such instruments as are referred to in your letter, it seems to me that it is clear that your question should be answered in the negative and it is so answered.