

house receipts are duly registered with the Indiana Securities Commission as required by law; but that when finally a sale is made which is accompanied or to be accompanied by a change of the physical possession or withdrawal within this State, or importation into this State, of said liquor, the purchaser must be authorized to receive or import the same under the provisions of the Alcoholic Beverages Act of 1935, heretofore referred to.

Your third question reads as follows:

“The commission also desires to know whether your conclusions in relation to the preceding questions will apply with equal force to receipts offered in Indiana covering whiskey stored in warehouses in this State.”

It is my opinion that the conclusions reached in answer to the questions numbered one and two apply with equal force to whiskey warehouse receipts irrespective of whether the whiskey is stored in this State or some other state.

WEIGHTS AND MEASURES, BUREAU OF: County inspector of weights and measures, removal by county commissioners with approval of State Commission—whether charges must be preferred.

January 11, 1937.

Hon. Martin L. Lang, Commissioner,
Bureau of Weights and Measures,
Indiana State Board of Health,
State House Annex,
Indianapolis, Indiana.

Dear Mr. Lang:

I have at hand your inquiry of January 9th, submitting two questions, as follows:

1. Can a Board of County Commissioners remove a county inspector of weights and measures when the records of the Board show the incumbent was appointed for a four year period on January 3, 1933?
2. Is it necessary to give an examination and press charges of inefficiency, or can the removal be made by

the Board of Commissioners and approved by the State Commissioner of Weights and Measures without charges being preferred?

The appointment, removal, duties, etc., of county and city inspectors of weights and measures are governed by the provisions of chapter 86, Act of 1925 (Sections 69-102 to 69-117, inclusive, Burns Annotated Indiana Statutes, 1933).

Section 6 of the Act provides for removal from office of *either a county or city inspector* who "is not properly and faithfully performing the duties of his office," by the State Commissioner, after due notice and hearing, and subject to the right of appeal. Section 4 of the Act provides that a *city* inspector of weights and measures shall be appointed by the board of public safety and "shall serve continuously during good behavior under the provisions of section one hundred sixty of an act concerning municipal corporations, approved March 6, 1905, governing the fire and police force," and further provides that such city inspector shall not be removed for any political reason and only for good and sufficient cause after an opportunity for hearing is given by such board of public safety, subject, however, to the power of removal by the State Commissioner under authority of Section 6, as referred to above. These powers of appointment and removal of a *city* inspector which were originally vested in the board of public safety are now vested in the board of public works and safety by virtue of the provisions of chapter 233 of the Acts of 1933. (See Freyermuth, et al., v. State, ex rel., Burns (Indiana Supreme Court, June 9, 1936) 2 N. E. (2d) 399, 403).

It is noteworthy that while the act provides for a tenure of appointment during good behavior for a *city* inspector, and provides further that he cannot be removed by the appointing power except for cause and after opportunity for hearing given, no such provision is made in the act with respect to tenure of a *county* inspector, or with respect to his removal by the appointing authority. In fact, no tenure of appointment is fixed for a *county* inspector, and no conditions precedent attached to his removal by the appointing power except for the following provision in section 3 of the act:

"No person shall be appointed as a county inspector of weights and measures in any county unless such

person shall have been approved by the State Commissioner of Weights and Measures, and *no county inspector of weights and measures in any county shall be removed by the board of commissioners without the approval and consent of the State Commissioner of Weights and Measures.*" (Our italics.)

Although the foregoing provision does not affirmatively authorize removal of the county inspector by the Board of County Commissioners, nevertheless in my opinion such authority is conveyed by necessary implication from the language used. My view of the purport and effect of this language is supported, at least inferentially, by an opinion given by one of my predecessors, the Hon. Arthur L. Gilliom, to the Hon. I. L. Miller, former State Commissioner of Weights and Measures, under date of January 11, 1927 (Opinions of Attorney General, 1927-1928, p. 253), and likewise by the opinion of the Supreme Court of Indiana in the recent case of Freyermuth, et al., v. State, ex rel., Burns, *supra* (p. 403). In the latter case the court inferred that the power of removal of a *city* inspector, for cause, is conferred on the board of public works and safety by section 4 of the act, although the language in section 4, like that quoted above from section 3, is negative rather than affirmative.

Since the act fixes no tenure of appointment for a county inspector but does fix a tenure during good behavior for a city inspector, in my opinion the act must be construed as intending the former to hold his appointment subject to the pleasure and discretion of the Board of County Commissioners, except only as the pleasure and discretion of such board in terminating the appointment or removing the inspector may be controlled by the approval or disapproval of the State Commissioner. But even in the absence of such an implied intent from the act itself, the general rule is that where the term is not fixed by law, the officer or appointee is regarded as holding at the will of the appointing power. (See 46 Corpus Juris, par. 98, p. 964 and cases cited). Consequently, in answer to your first question, it is my opinion that a Board of County Commissioners may remove a county inspector of weights and measures at any time, with the approval of the State Commissioner, and this power of removal is not affected by any definite term of appointment specified at the time the appointment was originally made.

Likewise, in answer to your second question, it is my opinion that a removal may be ordered by the Board of County Commissioners, with the approval of the State Commissioner, without charges being preferred.

TAX COMMISSIONERS, STATE BOARD OF: Construction of Ch. 262 of Acts of 1935. Tax sale, method of offering where several tracts owned by same person are for sale.

January 16, 1937.

Hon. Philip Zoercher, Chairman,
State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion as to whether chapter 262 of the Acts of 1935, page 1292, repeals section 261 of chapter 59 of the Acts of 1919, page 344.

Section 261 of chapter 59 of the Acts of 1919, *supra*, provides as follows:

“Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest and penalty by the treasurer of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest and penalty provided by law, then such county treasurer shall at the next regular tax sale of lands or [for] delinquent taxes, sell the same to the highest bidder, and the purchaser thereof shall acquire thereby the same interest therein as is acquired by purchasers of other lands at such delinquent tax sales.”

Acts of 1919, page 344;

Burns Indiana Statutes Annotated (1933), Sec. 64-2204.

Chapter 262 of the Acts of 1935, *supra*, is an amendment of section 265 of the same chapter 59 of the Acts of 1919 and provides as follows:

“When more than one tract or lot belonging to the same person shall be for sale at the same time, in the