

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

same municipal corporation or township, each such tract or lot shall be offered separately for the payment of the sum due from such owner on each such delinquent tract or lot; and if no person shall bid off a part of each such tract or lot for the sum required, the said tract or lot shall then be offered to the highest bidder for cash: *Provided, however,* That in no event shall any liability for delinquent taxes on any tract or lot be chargeable to or be a lien against any other tract or lot belonging to the same owner."

Acts of 1935, page 1292;

Burns Indiana Statutes Annotated (1933), Cumulative Pocket Supplement of December, 1936, Section 64-2207.

In construing an amended act the court generally must consider it as to all subsequent applications as if the amendment had always been a part thereof.

Pomeroy, et al., v. Beach, et al., 149 Ind. 511 at p. 513;

Parks v. State, 159 Ind. 211 at p. 216;

Stiers, et al., v. Mundy, et al., 174 Ind. 651 at p. 655.

It follows that in construing chapter 59 of the Acts of 1919, *supra*, it must now be considered with respect to future applications as if chapter 262 of the Acts of 1935, *supra*, had always been a part of it. This much is clear.

It is likewise clear that there is no *express* repeal by chapter 262 of the Acts of 1935 of section 261 of chapter 59 of the Acts of 1919, *supra*, and that under the well settled rule *implied* repeals are not favored.

Lake Agricultural Company, et al., v. Brown, et al., 186 Ind. 30 at p. 36;

Greathouse v. Board, etc., 198 Ind. 95 at p. 106.

Moreover, in the construction of statutes, the different sections or provisions of the *same* statute should be so construed as to harmonize and give effect to every provision if that can be reasonably done. It is only where there is an irreconcilable conflict that the later provision prevails.

State, ex rel., v. Board, etc., 170 Ind. 595 at p. 600;
Woodring v. McCaslin, 182 Ind. 134 at p. 139.

With the foregoing rules in mind, I have given consideration to section 261 of chapter 59 of the Acts of 1919 in its relation to section 265 of the same act as amended in 1935 by chapter 262 of the Acts of 1935, and from such consideration I do not think there is such an irreconcilable conflict between the two sections as to result in an implied repeal of said section 261, or, in the special case provided for in section 265, to authorize a sale to the highest bidder for cash for less than the amount due until the property has been offered for sale for two successive years as provided in said section 261.

Section 265 as it appeared in the original Act and as amended in 1935, clearly deals with the subject as to how separate tracts belonging to the same person shall be offered for sale when they are for sale at the same time and when said tracts are located in the same municipal corporation or township.

The original section 265 provided that in such a case a part of one tract shall first be offered for sale for the entire sum due from the owner on all such delinquent lands or lots or otherwise. If no person bids enough for the partial tract to pay the whole sum due, then the entire tract is to be offered "*to the highest bidder for cash.*" If no person offers enough for the single tract to pay the whole sum due, then each of the other tracts shall be offered in like manner until the required sum is realized. If no one bids upon a part or all of the tracts separately enough to pay the amount due, then the whole of the tracts is required to be offered and sold to pay the taxes, penalty, interest and cost thereon. Neither the requirement that an offer be made "*to the highest bidder for cash*" of the entire of any given tract under the circumstance above set out, nor the requirement that the entire of said tracts shall be offered and *sold* together when the offer of the tracts separately did not avail to obtain a sufficient bid has been considered as authorizing a sale for less than the total sum due upon the first offer for sale. Rather, it has been considered that section 261 governed such a case and required an offer in each of two successive years before the property could be sold for less than the amount, and that seems to have been the reasonable and correct view to be taken of the two

sections. Such a construction gives an appropriate meaning to each section and avoids what, it seems to me, might result in illegal discrimination.

As amended in 1935, the same subject is dealt with by said section as was embraced in the original section, providing, however, a different method of sale. Instead of offering a part of one tract for the delinquency on *all* tracts, the section now requires the offering of a part of each tract for the delinquency on that tract alone. If the bid is not sufficient, then the entire of the separate tract is to be offered "to the highest bidder for cash." This is the same language as was used in the original section and which, as we have pointed out, was never deemed to require the sale for less than the amount due except under the circumstances set out in said section 261; and we see no reason requiring a different construction of the language as used in the amended section 265. Indeed, the language, literally interpreted, does not require a sale upon an insufficient bid. It requires only an offer.

In my opinion chapter 262 of the Acts of 1935 amending section 265 of chapter 59 of the Acts of 1919 does not repeal section 261 of the 1919 Act, *supra*.

**FARM, INDIANA STATE: Contempt, imprisonment for—
civil and criminal contempt—term and place of confinement.**

January 16, 1937.

Hon. Ralph Howard,
Supt. Indiana State Farm,
Rural Route No. 2,
Greencastle, Indiana.

Dear Mr. Howard:

I have at hand your inquiry concerning a commitment of one Frederick S. Cook, No. 77246, received by your institution from the Marshall Circuit Court. The commitment in question reads in part as follows:

"Comes now the plaintiff, by George F. Stevens, her attorney, comes also the defendant in person, and the court finds that the defendant Frederick Cook, is 36 years of age, and that said defendant is guilty of the