

such delinquent taxes, interest and the penalty thereon, together with the costs of such demand, and if the taxes, penalty, interest and costs are not paid within thirty (30) days from such demand, *and if such person shall not have sufficient real estate located in such county from the sale of which such delinquent taxes may be collected by sale therefor as provided by law*, he shall proceed forthwith to levy upon sufficient personal property of such delinquent to pay said taxes, penalty, interest, and all costs attached thereto, and to sell the same in the manner and at the place provided by law." (Our italics.)

Nor would chapter 262 of the Acts of 1935 change the foregoing conclusion. The provision of the above Act of 1935. . . .

"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."

does not divest the lien of personal property taxes, but simply provides that so far as the taxes on any particular parcel of real estate is concerned, that it shall not be a charge against some other tract.

There is nothing in the Act of 1935, however, that alters other provisions heretofore referred to, which fixes the lien of taxes on personal property upon *all* the property of the owner located in the county.

Burns Indiana Statutes, Annotated, 1933, Section 64-2001.

CLEMENCY, STATE COMMISSION ON: Powers and effect of rules adopted by Commission.

March 4, 1937.

State Commission on Clemency,
Executive Department,
Indianapolis, Indiana.

Dear Mrs. Headdy:

Your letter of February 26th asking my opinion as to the effect of section 3, chapter 156 of the Acts of the General

Assembly of 1935, insofar as it is in conflict with section 4, chapter 117 of the Acts of 1933, has been received.

Your question in its final analysis might be stated as follows:

Has a person convicted of a crime the right to file his petition for pardon or parole with the State Commission on Clemency at any time, or are his rights governed by the rules and regulations adopted by the commission for the proper administration of their duties.

The right of a person convicted of crime to a pardon or parole has always been subject to legislative control to some degree. Section 17, article 5 of the Constitution of the State of Indiana provides that:

“The Governor shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law.”

Since the enactment of this constitutional provision there have been many legislative enactments having to do with pardons and paroles of prisoners. Prior to the creation of the State Commission on Clemency the legislature had on various occasions provided some method for handling these petitions. Chapter 136 of the Acts of the General Assembly of 1927 constituted the board of trustees of the State Prison, the State Reformatory, the Woman's Prison and the State Farm as the Board of Pardons for such institutions and defined their powers and duties. This Act was repealed by section 10, chapter 117 of the Acts of the General Assembly of 1933, which created the State Commission on Clemency and provided in section 4 thereof that:

“It shall be the duty of the State Commission on Clemency to examine carefully and thoroughly into the merits of every petition which may be presented to the Governor for the pardon or parole, other than the temporary parole, of any person who shall have been convicted by any court of this State, and to report to the Governor, in writing, its conclusions and recommendations in each such case.”

This Act was amended by the Acts of the General Assembly of 1935, chapter 156 thereof, which provided that:

“The commission shall be authorized to prepare and adopt from time to time such rules and regulations as it may deem necessary to aid in the proper administration of this Act.”

It will be noted from a reading of these two sections that section 4, chapter 117 of the Acts of 1933, is not expressly repealed and the question, therefore, presents itself as to whether or not the authority given to the Clemency Board to adopt rules and regulations for the administration of its duties is controlling or whether or not the board is still bound to examine the merits of every petition which may be presented to the Governor, even though in contravention of the rules adopted by the board.

The Constitution gives the legislature authority to regulate by law the right to present petitions for pardon to the Governor. It is therefore evident that the Governor is not bound to accept and consider petitions for pardon or parole except in so far as the legislature imposes that duty upon him.

The Board of Clemency was created for the express purpose of regulating and controlling the method and manner of handling petitions and was designed to relieve the Governor from personal consideration of every petition. Section 2 chapter 156 of the Acts of 1935, accordingly provide that:

“The commission shall remain in session a sufficient length of time each quarter to properly investigate and hear and make a proper recommendation to the Governor on all petitions for clemency that may have been filed and are eligible for consideration under the rules during such session.”

It is apparent from the reading of this Act that neither the Governor nor the board are under an absolute duty to consider every petition presented except insofar as the same may be within the rules and regulations adopted by the Clemency Board for the proper conduct of its affairs. Since there is no law making it mandatory upon the Governor to consider petitions for pardon or parole, it is my opinion that the State Commission on Clemency is under no mandatory

duty to consider and pass upon petitions except insofar as they are filed and presented in accordance with the rules and regulations adopted by the board for the administration of its affairs.

MILK CONTROL BOARD, STATE: Whether administrator is within Federal or State Social Security Tax liability.

March 4, 1937.

Hon. C. W. Humrickhouse,
Executive Secretary,
Milk Control Board of Indiana,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an opinion in answer to the question as to whether the various administrators appointed for the purpose of carrying out the provisions of the Milk Control Act of 1935 are subject to the Social Securities Act.

I presume you refer to the Federal Act. The term "employment" under that Act does not apply to "service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more states, or political subdivisions."

See section 210 of title 2 of the Federal Social Security Act.

This title is the title dealing with Federal old-age benefits.

A similar provision is made with respect to the tax imposed by title 8 of the Federal Social Security Act and also with respect to the tax imposed by title 9 of the Federal Social Security Act.

The same provision is made with reference to the State Unemployment Compensation Act.

See Acts of 1936, page 83.

I think that the Milk Control Board and its several agencies are all a part of a State instrumentality and would, therefore, not be within either the Federal Act, known as the Social Security Act, or the State Act, known as the Unemployment Compensation Act.