

pal corporation, and by the including of the liability to a municipal corporation, the Act expressly includes liability to the State of Indiana. The portion of the section applicable reads as follows:

“Any person or any municipal corporation to whom or to which such funds, or any part hereof, may be due and owing, is hereby authorized to prosecute his claim for the recovery of such funds in his name or its corporate name, or otherwise, against such municipal corporation charged with liability for such funds,
* * *”

The definition of municipal corporation as defined in section 5 of the Act includes the state or any subdivision thereof and, applying the same to the provision making the municipal corporation, the county in case of a Clerk of the Circuit Court, liable to any person or other municipal corporation entitled to such funds, it is clear that the statute contemplates the state recovering what funds are due it as beneficiary of funds held in trust by any officer as may be relieved of liability under the provisions of this Act.

TAX COMMISSIONERS, STATE BOARD OF: County recorders, allowance of fees and manner of paying same.

June 21, 1937.

Hon. C. R. Benjamin,
State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of June 17 submitting the following question:

“Please give your opinion * * * as to the proper method of securing the fees made legal by the 80th Session of Indiana Legislature, and from the date fees may be retained thereafter.”

In answer to this question your attention is first directed to section 9, chapter 21 of the Acts of the Indiana General Assembly, 1933, which provided that,

“Recorders shall not be entitled to any additional compensation based on excess collections of fees, or on collections of any fees, but such fees as now provided by law shall be collected by such county recorders and shall be paid into the county treasury.”

This section was amended by the Acts of the Indiana General Assembly, 1937, by providing that,

“Twenty per cent of the collections, as now provided by law, shall be retained by the recorders of each of the various counties.”

The Act contains the further provision that the combination of salary and percentage of collections shall not exceed, in the aggregate, in any instance, a sum in excess of six thousand dollars.

It will be noted that the section as amended does not in any wise mention section 1 of chapter 21 of the Acts of the Indiana General Assembly, 1933, which provided that,

“No payments of salaries shall be made until the officer has made report of all fees collected and paid same into the treasury. The officers’ salaries herein designated shall be paid by the respective counties, and shall be in full for their services as such officers, and also for all services required of them as ex officio officers of any city which they serve as such, except as herein otherwise provided.”

Your attention is further directed to section 49-1402, Burns Indiana Statutes, 1933 Revision, which reads as follows:

“The clerks of the circuit court, auditors, treasurers, sheriffs and recorders of each county shall, on the last day of March, June, September and December in each year, and on the day of expiration of his term of office, make a sworn report to the county auditor in writing, showing specifically the amount of fees collected during the time intervening since last preceding report, and ending with the close of business on the last business day of said periods, and they shall pay into the county treasury for the use of the general fund of such county the amount as shown in such report and take the treasurer’s receipt therefor which receipt shall be filed

in the county auditor's office, and the auditor shall give to the officer a quietus for the amount paid by such officer: Provided, That should the date of making any such report fall on Sunday, such report and payment herein required to be made shall be made on the preceding day. Such funds, when paid into the county treasury, shall be termed such respective officer's costs, and an account of the same shall be kept by the auditor and treasurer with each officer during the time any fees are collected which have been taxed by him."

This last mentioned statute has been in force and effect in substance for many years in the State of Indiana and our Supreme Court has announced the following principle as the correct interpretation of such statutes:

"When the salary of a public officer is to be paid by the county out of a special fund arising from fees paid in on account of official services performed, the fees for such services belong to the county, and must be actually paid over to the county treasurer, or other designated officer, at the times and in the manner prescribed by the statute. Before any salary, or any installment thereof, can be paid to any county officer, an order for the same must be made by the county board, and a warrant drawn by the auditor; and in no case can the amount so to be allowed and paid to any officer on account of his salary, exceed the amount of fees previously turned into the treasury by him."

Harmon v. Board, etc., 153 Ind. 68 at 71.

It is apparent, therefore, that under the above statutes the county officer, even though entitled to a portion of the fees collected as a part of his salary, is required to report all fees collected to the county auditor and actually pay into the county treasury all fees so collected. He shall then file his claim for the portion thereof that is due. While this may seem to said official to be a useless and unnecessary procedure it must not be forgotten that the fees collected belong to the county and, as was said in the case of Legler v. Paine, et al., 147 Ind. 181,

"It was not his money to use or pay out, but belonged to the county, to be paid over by him to the county treasurer at the end of the quarter, and before

he should be entitled to any allowance of salary. It will not do to say that this is a useless and troublesome proceeding. The lawmaking power of the state, for reasons which were deemed good and sufficient, declared what should be done, and how it should be done. It is for all men to obey the law as it is written, and particularly for the officials of the state who have taken a solemn oath to do so."

It is my opinion, therefore, that all fees collected by county officials should be reported and paid into the proper county officials and claims for salaries should be filed and allowed in the regular way.

Chapter 284 of the Acts of the Indiana General Assembly, 1937, above referred to became effective June 7, 1937, at 5:25 P.M.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Conditional sales, waiver of provisions of statute by buyer.

June 22, 1937.

Hon. F. M. Call, Supervisor,
Division of Installment Finance,
Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of June 2, asking for our interpretation of the provisions of the Uniform Conditional Sales Act and particularly as to the following question:

"May the purchaser waive statutory protection as provided in sections 15, 16, 17, 18, 19 and 23 of the Uniform Conditional Sales Act *after* origination of the contract?"

Your attention is directed to section 24 of the Act which provides that:

"No act or agreement of the buyer before or at the time of the making of the contract nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of sections 16, 17, 18, 19 and 23. * * *"