

and expenses of said board: Provided, That the appropriations above made are hereby limited to the amount of fees collected in the same fiscal year."

It is my opinion, therefore, that the above provisions, as passed by the legislature in 1937, operate to repeal by implication, section 21 of the 1935 Act insofar as it attempted to authorize expenditures in excess of the specific appropriation.

It is my opinion, therefore, that your board is limited in its expenditures to the amounts provided in the budget for the fiscal years beginning July 1, 1937, and July 1, 1938.

ACCOUNTS, STATE BOARD OF: Fees of county treasurers; whether county treasurers may charge 6% of amount collected for collecting delinquent poll tax. Whether county treasurers may collect and receive 6% on taxes on moratorium duplicate.

June 24, 1937.

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

Dear Sir:

I have before me your letter calling attention to chapter 53 of the Acts of 1937 which amends section 6 of chapter 21 of the Acts of 1933, fixing the compensation of certain public officials and deputies and assistants and fixing the manner of payment thereof.

Acts of 1933, page 111;
Acts of 1937, page 294.

The provisions of chapter 53 of the Acts of 1937 are as follows:

"The county treasurers of the state shall in addition to the salary herein provided receive as their property 6 per cent on all delinquent personal property taxes only collected at any time during each calendar year. They shall also be entitled to charge and collect, as their personal property, a demand fee of fifty cents

from tax delinquents where collections result from personal demand. Deputy collectors of delinquent personal property taxes hired by the treasurer for the purpose of making personal demand shall be employed at his expense."

You submit the following questions:

"1. Are the county treasurers entitled to receive 6 per cent on personal property taxes collected which are carried on the moratorium duplicate?

"2. Are the county treasurers entitled to receive 6 per cent on delinquent poll taxes collected?"

I think the answer to your second question very obviously is in the negative. The 1937 Act limits the 6 per cent which is to belong to the several county treasurers, specifically to the collection of delinquent personal *property* taxes. Poll tax is not a property tax at all and never has been so considered.

The answer to your first question requires consideration of other sections of the statutes, to which I now desire to refer. I shall first refer to section 4 of chapter 30 of the Acts of 1933, page 149. The section provides as follows:

"Sec. 4. Any taxpayer who shall avail himself of the provisions of this Act, may pay the whole of such delinquent taxes and interest, upon any parcel of property assessed, at any time, or he may, at his option, pay the same in twenty equal installments, together with accrued interest, as hereinafter provided. If any taxpayer elects to pay such delinquent taxes and interest in twenty equal installments, all interest which shall have accrued on such delinquent taxes prior to the day on which the November installment of taxes was due in 1933 shall be added to the total amount of all delinquent taxes due and unpaid, and the amount so obtained shall be payable in twenty equal installments, together with accrued interest, the first of such installments being payable on or before the first Monday of May, 1934, the second on or before the first Monday of November, 1934, and like installments shall be payable on or before the like dates during the years 1935, 1936, 1937, 1938, 1939, 1940, 1941,

1942 and 1943. Any such taxpayer shall, with the May, 1934, installment of taxes, pay all interest which has accrued on such delinquent taxes from the day on which the November installment of taxes was due in 1933 up to and including the day on which the May installment of taxes is due in 1934, and shall also be required to pay with each of such installments, any current taxes, assessed against such property that may be due and payable at such times, as provided by law. The failure to pay any of such installments of delinquent taxes and interest, and current taxes, at the time when the same are due and payable, as herein provided, and as otherwise provided by law, shall cause such taxpayer to lose any and all rights under the provisions of this Act, and all such delinquent taxes, together with any current taxes, shall immediately become due and payable, together with any and all penalties and interest, as provided by law, and the property assessed shall be sold for such delinquent and current taxes, as provided by law; *Provided*, Any payments made under this Act shall be charged on the current tax duplicate by the county auditor before settlement (;) and, *Provided, further*, The failure to pay any of such installments of delinquent taxes and interest, and current taxes at the time when same are due and payable as herein provided, shall cause the county auditor to recharge such unpaid delinquent taxes together with current penalties and interest on the current tax duplicate."

In 1935 a similar act was passed, the purpose and intent of section 4 of which being to extend the privileges and benefits conferred upon delinquent taxpayers under and by virtue of the above quoted provision of the 1933 Act "to those delinquent taxpayers, who, by reason of economic conditions, were unable to avail themselves of the privileges of such Act."

Acts of 1935, page 828.

Section 4 of the 1935 Act provides as follows:

"Sec. 4. Any taxpayer who has not availed himself of the provisions hereinbefore set out for the payment of delinquent taxes may avail himself of the pro-

visions of this section and at his option, on or before the first Monday in May, 1935 (,) upon notice to the county treasurer of such option, pay the same in sixteen equal installments as hereinafter provided. If any taxpayer elects to pay such delinquent taxes in sixteen equal installments all of the delinquent installments up to and including the installment due on the first Monday of November, 1934, shall be added together and the interest computed thereon at the rate of 4 per cent per annum from the date on which they became delinquent until the date of November, 1934 (,) payment shall be added to the total of such delinquent installment or installments and the amount so obtained shall be payable in sixteen equal installments. Said sixteen equal installments shall bear interest at the rate of 4 per cent per annum. The first of said sixteen installments shall be due and payable on or before the first Monday of May, 1936, together with interest at the rate of 4 per cent per annum thereon (,) as in this section provided (,) and the second installment shall be due and payable on or before the first Monday of November, 1936, together with interest thereon, at the rate of 4 per cent per annum as provided in this Act, and like installments shall be due and payable on or before the like dates during the years 1937, 1938, 1939, 1940, 1941, 1942, 1943, together with interest at a like rate and from the like date. Any such taxpayer shall, with the May, 1936, installment, or any subsequent installment, pay with each such installment all and any current taxes assessed against such property that may be due and payable at such times as provided by law. The failure to pay any of such installments of delinquent taxes, and interest to accrue thereon, as hereinbefore set out, and current taxes at the time when the same are due and payable, as herein provided, and as otherwise provided by law, shall cause such taxpayer to lose any and all rights under the provisions of this Act, and all such delinquent taxes, interest accrued thereon, together with any current taxes, shall become immediately due and payable, together with any and all penalties, as provided by law, and the property as-

essed shall be sold for such delinquent and current taxes as provided by law: *Provided*, That any payments made under this Act shall be charged on the current tax duplicate by the county auditor before settlement, and provided further the failure to pay any such installments of delinquent taxes and accrued interest and current taxes at the time when the same are due and payable, as herein provided, shall cause the county auditor to recharge such unpaid delinquent taxes, together with current penalties, and interest on the current tax duplicate."

Acts of 1935, pages 825-827.

Other sections of both acts require the several counties to procure, use and maintain separate duplicates, the form of which to be prepared by the State Board of Accounts, in which all such taxes are to be entered.

Acts of 1933, page 152;

Acts of 1935, page 827.

It is this duplicate which is referred to in your question No. 1 as the "moratorium duplicate."

Returning now to a consideration of the provisions of chapter 53 of the Acts of 1937 already quoted, the effect of this Act is to raise the fee payable under section 6 of chapter 21 of the Acts of 1933 to county treasurers for collection of delinquent personal property taxes from 3 per cent of said taxes to 6 per cent. Otherwise the provisions of the original section 6 are not materially different from the amended section so far as the question submitted is involved.

It seems to me that the purpose of the allowance of this particular fee for the collection of delinquent personal *property* taxes was to provide an additional compensation to county treasurers for extra services in the collection of such taxes and that the term "delinquent taxes" as therein used, had reference to taxes which were not paid at the time of payment as fixed by law. Of course, the taxes which were carried forward and entered upon the moratorium duplicate had been delinquent but by virtue of the above acts of the General Assembly the taxpayer was allowed additional time within which to pay them and was allowed to pay them in the installments as provided therein. As to any taxpayer,

therefore, who availed himself of the privileges accorded by the above Acts of 1933 and 1935 authorizing the payment of delinquent taxes in installments, such taxes were not due and payable except in the installments as provided. The Acts provided that upon the failure to pay any installment the entire balance became due and payable together with current penalties and the county auditor was required to recharge them, together with current penalties and interest on the current tax duplicate.

Acts of 1933, page 157;

Acts of 1935, page 827.

Chapter 30 of the Acts of 1933 and chapter 166 of the Acts of 1935 both provided that the board of commissioners might authorize the employment of additional help necessary to administer the provisions of the Act.

Acts of 1933, page 152;

Acts of 1935, page 827.

It would seem from the above that it was contemplated there would be additional service required but that that service was to be compensated for not by a delinquent collection fee but by an express allowance commensurate with the additional duties to be performed. This should also be considered I think. When these taxes were entered upon the moratorium duplicate there were no additional duties devolving upon the county treasurers for their collection other than applied to current taxes, so long as the taxpayer made the payments at the time provided, that is, the county treasurer was not required to take special means of effecting a collection. When all of these matters are considered together it seems to me that taxes on the moratorium duplicate would not be considered as delinquent within the meaning of chapter 53 of the Acts of 1937 until there had been a default in the payment of some installment of taxes. When that occurred the auditor would then be required to recharge the taxes upon the current duplicate; the taxpayer would lose all of his rights by virtue of the moratorium acts and his taxes would become delinquent in the ordinary course as other taxes.

In my opinion your first question should also be answered in the negative.