

**ACCOUNTS, STATE BOARD OF: Sales by counties of real estate, title to which has been taken without foreclosure of school fund mortgage.**

July 22, 1937.

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

Dear Sir:

I have before me your letter of July 17th, calling attention to Section 4 of Chapter 118 of the Acts of 1933, which provides as follows:

“Where lands have been mortgaged to the common school fund or the congressional school fund or the permanent endowment fund of Indiana University and there is a default in the payment of the interest, or the interest and principal, and the mortgagor is unable to make such payments, the Board of Commissioners may, in regular or special session, if it is for the best interest of the county and the mortgagor, accept, in the name of the county, a conveyance of such land from the owner and take possession thereof, in which event all foreclosure proceedings shall be waived.”

Acts of 1933, p. 724.

You state that you are unable to determine the method of sale for properties so acquired and request an official opinion upon the subject. It is pointed out that if the property acquired by deed from the mortgagors is similar to other county property it, of course, must be sold at public auction after giving notice of the time, terms and place of sale, referring to Burns Indiana Statutes, Annotated (1933), Sections 26-534 and 26-2008.

On the other hand, you state that if the 1933 Act, referred to above, is simply a substitute for foreclosure proceedings, the property deeded to the commissioners probably must be sold by the auditor in the same manner as other property which has been bid in by the auditor at a school fund foreclosure sale, referring to Section 28-244 of Burns Indiana Statutes, Annotated (1933).

Reference to Section 28-244, *supra*, discloses the fact that the procedure there set out refers to the case where the auditor has bid the property in "*on account of the fund.*" In a case where no bid has been received for the amount due. In such a case the title to the property vests in the state for the use of the fund and the sale by the auditor is solely for the purpose of reducing the property so held to cash, (Burns Indiana Statutes, Annotated, 1933, Section 28-248) any deficiency after sale to be made up by the county. The provisions above referred to are parts of chapter 1 of the Acts of 1865 as subsequently amended from time to time.

In 1899 an Act was passed which authorized the county in cases where lands have been mortgaged to the common school fund or congressional school fund and there is a default in the payment of interest or the interest and principal and the auditor is unable to sell the land for a sufficient amount to pay the loan as provided by law, to pay the full amount to the school fund and, if it is found to be for the best interests of the county in reimbursement of its general fund, it was then authorized to accept in the name of the county a conveyance of the land from the owners and take possession thereof. The same Act also provided that where lands were mortgaged to the common school fund or the congressional school fund and on account of a default were offered for sale and bought in by the auditor, *on account of the fund* and re-offered by him pursuant to section 28-244, *supra*, with the result that no bid was received sufficient to pay the principal and interest, damages and costs accrued on the loan—that in such event also the county might pay the entire amount to the school fund, thereby acquiring the lien which the State had. In such event the auditor is required to proceed to collect the amount due the county by foreclosing the lien and causing the property to be sold pursuant to the decree of foreclosure. The Act further provided that upon the property being offered for sale pursuant to the decree, the county might buy it in.

Burns Indiana Statutes, Annotated (1933), sections 28-250 to 28-252.

Section 28-254 of Burns Indiana Statutes, Annotated (1933), provides the method for the disposal by the county of property thus acquired, and it seems to me that this procedure is the procedure to be followed in case title is received by the

county pursuant to section 4 of chapter 118 of the Acts of 1933, *supra*. In other words, section 4 is intended to provide a method by which the county having paid the amount of the loan to the school fund could acquire title to the real estate without proceeding with a foreclosure as provided in section 28-251 and section 28-252 of Burns Indiana Statutes, Annotated, (1933). If this provision of the 1933 Act, above referred to, should be held to apply to the situation as outlined in section 28-244, referred to by you, it would seem to completely repeal the provisions of section 28-248 of Burns Indiana Statutes, Annotated, (1933), which provides that when land is bid off by the auditor no deed need be made therefor to the State, but the statement of the sale and the record thereof "shall vest the title in the State for the use of the proper fund," whereas the provision of section 4, *supra*, would authorize a conveyance directly to the county. While section 4, *supra*, of the 1933 Act does not expressly state that previous reimbursement of the school fund is a condition precedent to its operation, I think there is such an implication in the language used since the conveyance is to the county, not as a trustee but as an owner.

In other words, it seems to me that where the auditor bids the property in "on account of the fund" the title vests in the State for the use of the fund and the provision of section 28-244, *supra*, contemplates a sale of the property by the auditor to reduce the mortgaged real estate to cash. On the other hand, section 4, *supra*, contemplates the vesting of title in the county by virtue of a conveyance by the mortgagor or owner and is conditioned upon the fact that the county has made the school fund whole out of its general fund.

In my opinion, the county in such a case is in the same position as if it had proceeded under section 28-251 and section 28-252 of Burns Indiana Statutes, Annotated, (1933), and that in re-selling the property the procedure to be followed is the procedure as outlined in section 28-254, *supra*.