TAX COMMISSIONERS, STATE BOARD OF: Exemptions, whether real estate held by Indiana University, but leased by Indiana University for ninety-nine years, is taxable. Exemptions whether ninety-nine-year lease from Indiana University is taxable to lessee.

April 4, 1938.

Hon. Philip Zoercher,
Chairman, State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion based upon the following facts as set out in your letter:

"On the 4th day of December, 1924, the Trustees of Indiana University, for the use and benefits of Indiana University School of Medicine, as lessors, leased a parcel of vacant ground located at 428 North Illinois Street, Indianapolis, to Edward G. Sourbier, for the term of ninety-nine years. Thereafter, with the consent of the University, Edward G. Sourbier assigned his interest in said property to Edward Realty Company, which corporation erected a one story building upon the property. Thereafter, Edward Realty Company went through receivership and, with the consent of the University, the leasehold interest was assigned to 428 North Illinois Realty Company, Inc.

"Neither the ground or the improvements have ever before been placed upon the tax duplicate. Said ninety-nine year lease specifically provides as follows:

'SEVENTEENTH: It is further covenanted and agreed that the title to all buildings and improvements that may be built on said real estate or any part thereof, at any time during the term of this lease, shall vest immediately in the lessors, subject only to the leasehold interest therein of the lessee under this lease, and that if this lease is terminated for any reason, at any time before the end of said ninety-nine year period, the lessee shall have no right, title or interest in and to any buildings or improvements then on said real estate.'
“Said lease also provides as follows:

‘TWENTY-FIRST: Nothing in this lease contained shall authorize the lessee to do any act or make any contract so as to encumber in any manner the title of the lessors in said demised premises or building, but permission is hereby expressly given to the lessee to mortgage his interest in the said premises created by this lease.’ ”

The question which you submit, based upon the above facts, is as to whether the improvements placed on said real estate by the lessee is taxable against the lessee.

It will be noted that paragraph Seventeenth of the lease, as above quoted, provides that “the title to all buildings and improvements that may be built on said real estate or any part thereof, at any time during the term of this lease, shall vest immediately in the lessors, subject only to the leasehold interest therein of the lessee under this lease.” The sole interest, therefore, of the lessee in the real estate, including the buildings, is the leasehold interest. Section 64-201 of Burns’ Indiana Statutes Annotated 1933, provides in part as follows:

“The following property shall be exempt from taxation:

First. The property of the United States and of this state. * * *”

I think that the above described property, including the buildings, is exempt in the name of the University, under the above quoted statutory provision. While Indiana University is a corporate structure, and is, in fact, a corporation, it is, in my opinion, an agency of the state, and property held by it is state property within the meaning of the above exemption. This identical question has not been before the Supreme Court of Indiana so far as I am able to find, but in the case of Fisher et al, Trustees, v. Brower et al, 159 Ind. 138, the question of the relation of the university to the state is considered. It is therein pointed out that the university was established in 1820, in compliance with the mandate of the constitution, and took the name of the “State Seminary at Bloomington.” It was later called “Indiana College” and still later took the name of “Indiana University.” The General Assembly of 1852 specifically gave recognition to it as “The University of the
State.” It had its origin from the sale of certain lands of the state, acquired by gift from the government for educational purposes, which have been augmented from time to time by specific appropriations from the state treasury. I think, therefore, that the provision quoted earlier in this opinion, exempting from taxation the property of the state, operates to exempt this property owned by the university from taxation.

This does not mean, however, that the lessee is to be freed from liability to taxation because of the exemption as applied to the university. Section 64-513 Burns’ Indiana Statutes Annotated 1933, provides as follows:

“When real estate which is exempt from taxation if leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate.”

It seems to me that this provision of the statute very clearly makes the leasehold interest taxable to the lessee as real estate and same is properly assessable and taxable at its true cash value. Even without such a statute, I think the leasehold interest would be subject to taxation.

See the case of San Pedro. L. A. & S. L. R. Co. v. City of Los Angeles (Cal.), 179 Pac. 393, where the court said, quoting from Mr. Justice Sloss in an opinion filed at a former hearing of the appeal, on page 395:

“It is true that the code makes no specific provision for separate assessments of leasehold and reversion to the lessee and the owner of the fee, respectively. The usual procedure in this state, as elsewhere, has been to assess the entire value of the land to the owner of the reversion. Such assessment covers the value of the leasehold as well as of the reversionary interest, the sum of the two being comprised in the value of a complete ownership of the land. Graciosa Oil Co. v. Santa Barbara, 155 Cal. 140, 99 Pac. 483, 20 L. R. A. (N. S.) 211. The state thus receives the tax upon every interest in the land, and the requirement of the Constitution, and of section 3607 of the Political Code, is satisfied. Where, however, the state owns the reversion, its re-
versionary interest, like all property owned by it, is exempt from taxation. In such a case it cannot be said that the private property right of the lessee is taxed through the medium of the taxation of the interest of the owner. Still less can it properly be said that because the interest of the state is not taxable, the private owner of a leasehold interest should be exempt from paying taxes upon the property that is owned by him."

In this case, however, there is a special statute to cover the question, to-wit: Section 64-513 of Burns' Indiana Statutes Annotated 1933, which I think should be followed in this case.

INHERITANCE TAX, DIVISION OF: Duty to inspect contents of locked safety deposit boxes upon death of officer of corporation having access to such boxes.

April 5, 1938.

Hon. Isaac Kane Parks,
Inheritance Tax Administrator,
231 State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of April 4, 1938, in which you submit the following questions:

"Will you please supply official opinion with respect to section 19 of the Inheritance Tax Act, and relating to the closing or ensealing of safety deposit boxes in the event of the death of one or two or more officers of a corporation having access to a safety deposit box of the corporation in a safety deposit box concern.

"Upon the death of the individual officer of the corporation, and who thus had access to the box, should the box be sealed and contents checked, under the statute, to ascertain if the box contained assets of such person?"

In regard to this question your attention is directed to section 6-2419, Burns' Indiana Statutes, 1933 Revision, which reads as follows: