TAX COMMISSIONERS, STATE BOARD OF: Delinquent tax sale. Character of deed to be given when sold to highest bidder. Sale of land for delinquent taxes after two prior offers and where tax lien exceeds value of land as appraised for taxation.

June 24, 1938.

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

Dear Sir:

I have before me your letter requesting an official opinion construing section 64-1516 of Burns' Indiana Statutes Annotated 1938, same being section 222 of the Tax Act of 1919.

The particular question submitted is as follows:

"If a sale has been made under section 222, and in advertising the sale there was not included the taxes for the past fifteen months, does the purchaser acquire a title clear of all incumbrances, including the taxes for the last fifteen months?"

The section referred to provides as follows:

"Any real estate within the State of Indiana against which delinquent taxes have accumulated which aggregate an amount equal to or greater than the assessed valuation of said real estate, and which has been offered for sale at not less than two (2) public tax sales and has, at each sale, failed to bring an amount equal to the accrued taxes and penalties standing against said real estate, shall be sold by the county treasurer at public sale to the highest bidder for cash, after giving notice of such sale as in case of sale of land for delinquent taxes, and the authorities now designated by law and authorized to execute deeds shall be authorized to execute to said purchaser a deed conveying the title to said encumbered property to said purchaser for value free and clear of tax encumbrances."

Section 223 of the Tax Act of 1919 in providing for the distribution of the money received upon a sale pursuant to said section 222 provides as follows:
"The county treasurer shall receive the amount of the sale price for such property and shall prorate the claims of the state, the county and city against such property for taxes and the surplus of such sale, if any, shall be delivered to the owner of said property at the time of the sale."

I think the above sections should be construed together and that when so construed it is obvious that the Legislature was intending to liquidate all tax claims existing at the time of the sale and place the property affected back upon a normal tax paying basis in cases coming within the provisions of section 222 supra. The sale pursuant to said section is unlike the ordinary tax sale. In the first place there can be no sale under it except (1) where delinquent taxes have accumulated against said property which aggregate an amount equal to or greater than the assessed value of the real estate and (2) said real estate must have been offered at the time of regular delinquent tax sales for not less than two such sales and at each of such sales have failed to bring an amount equal to the accrued taxes and penalties standing against it. Second, the treasurer is authorized to make a sale to the highest bidder irrespective of amount. Third, in distributing the cash received upon the sale the claims of the state, county and city are to be prorated, which, of course, could only apply when the amount received is less than the total amount of the tax liens. Fourth, a deed free from tax incumbrances is to be given at the time of the payment of the purchase price.

One other matter needs to be noticed and that is the provision that "the surplus of such sale, if any, shall be delivered to the owner of said property at the time of the sale."

I now desire to call attention to section 261 of the 1919 Tax Act which I think must also be construed with sections 222 and 223 supra. Section 261 is section 64-2204 of Burns' Indiana Statutes Annotated 1933 and provides as follows:

"Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest and penalty by the treasurer of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest and penalty provided by law, then such county treasurer shall, at the next regular tax sale of lands, or [for]
delinquent taxes, sell the same to the highest bidder, and the purchaser thereof shall acquire thereby the same interest therein as is acquired by purchasers of other lands at such delinquent tax sales."

It will be noted that this section makes it the duty of the proper treasurer after having offered lands for sale for delinquent taxes for two successive years without receiving a bid sufficient to pay them to offer such lands for sale at the next regular tax sale and to sell same to the highest bidder. The successful bidder, however, does not receive a deed. He acquires only the rights which he would receive as a purchaser at the ordinary sale. Redemption could be made from such a sale after which the land would again be subject to resale to obtain the taxes not paid by the former sale. See Burns' Indiana Statutes Annotated (1933) Secs. 64-2204 and 64-2205. Thus the remedies of the purchaser and of the owner in a purchase under section 261 of the 1919 Act is entirely different from their remedies in the case of a sale under section 222 of said Act.

The result of this analysis, in my opinion, is to show conclusively that in the case of sales under section 261 supra it was considered that the lands sold thereunder were in all probability of such value as to make the ultimate collection of all taxes probable even though the bids at the two previous sales were insufficient. In the case of sales under section 222 supra, however, it is equally evident that in view of the accumulation of taxes it was considered very improbable that all taxes could ultimately be collected and it was therefore deemed advisable to furnish a method by which the land could be placed back on a normal taxing basis and at the same time secure the highest price possible for it. It was for that reason, in my opinion, that it was provided that a deed should be given at once "free and clear of tax incumbrances." It was doubtless thought that to do so would obtain a higher bid than could be obtained in any other way.

Under the same Act as contains sections 222 and 261 supra, sales for the collection of delinquent taxes included taxes for the current year in which the sale was made. Acts of 1919, page 343. Since that time, however, in 1932 it was provided that:
“No real estate shall be sold for the purpose of collecting any delinquent instalment or instalments of tax until fifteen (15) months shall have elapsed after any such instalment shall have become delinquent, and such real estate shall be sold for the purpose of collecting only such taxes as shall be delinquent.”

It remains to consider whether the above provision affects the provision of section 222 supra and especially the provision therein that the deed given is to be “free and clear of tax incumbrances.” Implied repeals are not favored, and are to be given effect only in cases where there is such an irreconcilable conflict between the earlier and later Act as prevents effect being given to both of them. But I do not think that is true in this case. The provision of the 1932 Act above quoted was evidently for the protection of and to ameliorate the condition of the taxpayer owner, giving him more time within which to pay his taxes, correspondingly benefitting him with respect to a redemption from the sale. But, if the time has arrived under which a sale is required to be made under section 222 supra and such sale is made thereunder, there is no right of redemption or other means by which the taxpayer owner may be benefitted by such a provision as is contained in the language of the 1932 Act above quoted.

In my opinion, therefore, the above quoted provision from the 1932 Act does not have the effect to so modify said section 222 supra as to require that the deed be subject to all taxes which are not delinquent.

Your question, however, contains an added consideration, which should be examined. You assume for the purpose of the question that in advertising the sale the taxes for the previous fifteen months were not included. I doubt whether this is the type of notice contemplated by section 222 supra. While the language is “after giving notice of such sale as in case of sale of land for delinquent taxes.” I think the reference is to time and method of notice. The purpose of the statute could hardly be obtained from the usual notice of sale for delinquent taxes where all that is obtained by the purchaser is the lien of the state with the possibility of its ripening into a deed. In sales under section 222 supra a deed is given at once “free and clear of tax incumbrances” and I think the notice of sale in such cases should include all taxes, appro-
appropriately state that the sale would be to the highest bidder and that a deed would be given to the purchaser "free and clear of tax incumbrances." In your question the language is, "does the purchaser acquire a title clear of all incumbrances," etc. Evidently you refer only to tax incumbrances. Your question in my opinion, should be answered in the negative, owing to what I think is a defect in the notice. Assuming a prior proper notice, however, I think such a deed be free and clear of tax incumbrances.

ACCOUNTS, STATE BOARD OF: Board of Depositories. Salary of Secretary for Board. Field Examiners as Secretary of Board.

June 24, 1938.

Mr. Ross Teckemeyer, Secretary,
State Board for Depositories,
Public Deposits Insurance Fund,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of June 14 asks the opinion of this office relative to compensation allowed the Secretary of the Board for Depositories under Chapter 3, Acts of 1937. You set out that the Secretary is a Field Examiner for the State Board of Accounts and has been allowed the per diem provided for field examiners for the actual days employed in administering the Public Deposits Insurance Fund and when employed in the duties of Field Examiner for the State Board of Accounts, the per diem has been paid as such. Your letter also says that in addition the Board for the Department of Treasury has approved an additional fifty dollars ($50.00) per month for services as Secretary of the Department of Treasury.

The question which you ask is this:

"Does the above payment violate any provisions of the law relative to compensation paid employees?"

The applicable section of Chapter 3 of the Acts of 1937 is Section 25, subsection a, which provides:

"The board for depositaries shall manage and operate the insurance fund. It may employ such assistants,