

1969 O. A. G.

OFFICIAL OPINION NO. 3

May 5, 1969

Mr. Joseph D. Geeslin, Jr.  
Chairman, State Board of Tax Commissioners  
Room 201—State Office Building  
100 North Senate Avenue  
Indianapolis, Indiana 46204

Dear Chairman Geeslin:

This is in response to your written request of recent date for my opinion as to the recording and affidavit provisions with respect to conveyances to the State of Indiana under the Acts of 1969, Ch. 137, as found in Burns' (1969 Supp.), Sections 49-3251 through 49-3255, resulting from House Enrolled Act No. 1314, legislation taking effect April 1, 1969.

Also, in this connection, we have also received a copy of a letter from the Auditor of Delaware County, Mr. George H. Nixon, directed to the Indiana State Highway Commission, in which said County Auditor declines to record the transfer of certain deeds presented by the State Highway Commission for transfer, relating to real estate acquired by the State of Indiana for highway right-of-way. The reason given by said County Auditor was the absence of the Affidavit Form No. 1001.

Although the State Board of Tax Commissioners is in the process of revising said affidavit form required by this law as a result of pending litigation in several counties, the question which you and the Auditor of Delaware County have raised goes to another matter which is not at this time involved in pending litigation, and which must be handled immediately because of the serious detrimental effect that a delay will cause to the operations of the State Highway Commission, and perhaps other state agencies.

Directly in point is the fact that no statute requiring the performance of specific acts has application to the State of Indiana unless it is so stated in said statute by the General Assembly of the State of Indiana. *49 Am. Jur., States § 14.*

There is no provision in the subject statute (to be printed by the Secretary of State of the State of Indiana as *Chapter*

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137 of the Acts of 1969) requiring the provision of the affidavits as a condition precedent to the recording of the transfer of real estate to the State of Indiana when the deeds are presented for recording by the State of Indiana.

However, I am informed that the State Highway Commission intends to provide such affidavits from the grantors in the future as a matter of information for the State Board of Tax Commissioners; but in respect to those deeds obtained by the State of Indiana (State Highway Commission) without such affidavit from the grantors, the Auditors and Recorders of the several counties of the State of Indiana cannot lawfully refuse to transfer and record the same when presented by the State of Indiana and its agents for transfer and recording.