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OFFICIAL OPINION NO. 62

December 29, 1967

**REAL PROPERTY—Selling of Property Where Title is
Ostensibly in State Agency Rather Than State.**

Opinion Requested by Mr. Edward L. McCormick, President,
State Fair Board.

You have asked me to advise the State Fair Board whether an eight (8) acre tract of land owned in the name of the Indiana State Fair Board can be sold and the money returned to the Indiana State Fair Board for its use. You have advised me that the tract of land, located near 75th Street in Marion County, originally was purchased by the Fair Board's immediate predecessor with Fair Board funds for use as a dumping ground. However, for a number of years it has not been usable for such purposes because of the changed nature of the area in which it is located. The Board considers that it is no longer of direct value to the Fair operations. You have also asked whether, in the event that the land cannot be sold or that the proceeds of a sale would not revert to the Fair Board, the Fair Board may trade or exchange that land for land adjoining the Fair Grounds which could be used for parking.

As I advised the Governor in an Official Opinion in 1966, it is my opinion that land held by the State of Indiana for State Fair purposes is held by the State in fee simple, 1966 O.A.G. 168, at 171, 177. The fact that the State Fair Board erroneously took title to this land in its own name rather than in the name of the State of Indiana cannot affect the ownership of the State. Such lands cannot be sold or exchanged without specific statutory authority:

“. . . Public officers have no authority to dispose of the State's lands except such as is conferred upon them by positive statute. Any sales of such lands by them without such statutory authority are void as against the State, unless they are in some proper way ratified by the State." *State v. Portsmouth Sav. Bank*, 106 Ind. 435, 451, 7 N.E. 379 (1886).

The State Fair Board was created by and its duties are specified in Acts 1947, ch. 214, as amended, which may be found in Burns §§ 15-216—15-229. Your board is given

“complete control of said state fair grounds, the buildings and other equipment thereon and all property and property rights held for the furtherance of its purposes. . . .” Act, section 6, Burns § 15-221.

Specific power to rent such land or buildings is given to the Board in that section of the Act, as is the power to purchase other property, but the power of sale is not specifically granted.

However, the sale of land belonging to the State of Indiana which is no longer required for state purposes has been specifically authorized. Acts 1889, ch. 162, § 11, Burns § 62-216, authorized and directed the Auditor of State to

“sell under the provisions and conditions of this act all lands of the State upon which there is no public building, or which is not in actual use by any of the institutions of this State, or which has not been set apart by law for State purposes, the proceeds thereof to be paid into the general fund in the Treasury of State. . . .”

That Act also required the purchasers to pay the purchase price, as certified by the Auditor, to the Treasurer of State. The deed was to be signed by the Governor and attested by the Auditor, with the seal of the State affixed. Acts 1889, ch. 162, § 6, Burns § 62-211.

The authority of the Auditor of State to sell such property was transferred in 1947 to the department of public works

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and supply by the Financial Reorganization Act of 1947, Acts 1947, ch. 279, § 12, as amended by Acts 1951, ch. 88, § 1, Burns § 60-1812. The method of conducting such sale was also set out therein, as was the fund to which the purchase money would become payable:

“All sales of property belonging to the state, excepting property on which allowance is made on another purchase, shall be conducted by the Director of Public Works and Supply and shall be based on competitive bids and shall be made to the highest responsible bidder, provided, such property shall be sold at public sale or by sealed bids delivered to the office of the Director of Public Works and Supply prior to the date of sale after notice of sale is given by publication. . . . All such sales shall be made for cash. The proceeds of any sale shall be deposited in the state treasury and credited to the fund from which the property was purchased. *This section shall apply to the sale of property of or under the management or control of the State Fair Board.*” (Emphasis added.)

Section 13 of the Financial Reorganization Act of 1947, Burns § 60-1813, contains further requirements for such a sale, including the determination by the director of the department as to the highest responsible bidder for the property. The department of public works and supply, and the office of its director, was abolished by the Administration Act of 1961, ch. 269, § 9, Burns § 60-109, and the powers and duties of that department were transferred to the Department of Administration. Authority to sell surplus or obsolete property was also transferred to the Department of Administration by § 12 of the Administration Act of 1961, Burns § 60-112:

“All authority vested by law in any officer or agency to dispose of or sell obsolete or surplus property is hereby transferred to the department.”

A statute which is in irreconcilable conflict with an earlier statute will repeal the earlier statute only to the extent to

which they cannot be harmonized. *Payne v. Buchanan*, 238 Ind. 231, 148 N.E. 2d 537, 150 N.E. 2d 250 (1958); *Watson v. Strohl*, 220 Ind. 672, 681, 46 N.E. 2d 204 (1943). Therefore, the power of sale is vested in a state officer pursuant to the 1889 Act, and the deed to state-owned property, when it is sold, must be signed by the Governor and attested by the Auditor, in accordance with the 1889 statute. That portion of the 1889 statute is not in conflict with any later statute. However, the authority of the Auditor to conduct the sale has been transferred to the Department of Administration by the 1947 and 1961 Acts, and the manner of conducting the sale is that prescribed in the 1947 Act, rather than that prescribed in the 1889 Act.

The Governor's approval for such a sale must be obtained, because Article 5, § 1, of the Indiana Constitution places in the Governor the responsibility for the management of the State's real estate. *Tucker v. State*, 218 Ind. 614, 681, 35 N.E. 2d 270, 295 (1941). (Section 15 of the Financial Reorganization Act of 1947, Burns § 60-1815, is legislative recognition of the Governor's power to manage the State's real estate, *i.e.*, it requires that all contracts having to do with the central management of the State's real estate must be signed by the Governor.) Since I am the legal advisor of the Board, the deed and other necessary papers must be approved by me for legality and form.

It is my opinion, therefore, that the State Fair Board may, by resolution, determine to sell land under its control which belongs to the State of Indiana and upon which there is no public building, or which is not in actual use by the State Fair Board or any other institution of the State of Indiana, or which has not been set apart by law for State purposes. The Fair Board may, with the approval of the Governor, request the Department of Administration to conduct a sale of the property in the manner prescribed by the Financial Reorganization Act of 1947.

You also asked whether any proceeds of a legal sale may be returned to the State Fair Board. Although the 1889 Act previously quoted provided that money from the sale of lands should be paid into the general fund, that provision

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has been superseded by the Financial Reorganization Act of 1947, § 12, as amended by Acts of 1951, ch. 88, § 1, Burns § 60-1812, previously quoted, which prescribes that proceeds from the sale of property

“shall be deposited in the state treasury and credited to the fund from which the property was purchased.”

Therefore, it is my opinion that the proceeds of the sale would return to the State Fair Board if, as indicated by you, the State Fair Board purchased the property originally from funds under its control.

Since the answer to your first question is in the affirmative, it may be unnecessary for me to answer your second question. However, I should like to point out that I can find no statute authorizing the exchange of land under the control of the State Fair Board for other land held by private owners. In the event that there should be land adjoining the Fair Board and owned by the State of Indiana or other governmental agency of this State which the Board should desire to acquire, a different question would be presented. I would be happy to answer any legal questions you might have concerning such a transaction with a particular governmental agency.

OFFICIAL OPINION NO. 63

December 29, 1967

STREAM POLLUTION CONTROL BOARD—Making Grants to Municipalities Having Qualifying Programs.

Opinion Requested by Hon. Joseph W. Harrison, State Senator.

Your letter in which the Honorable Austin E. Barker, Indiana State Representative, and the Honorable Keith E.