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in accordance with such plans. *The statute is paramount, and it is elementary that a municipal ordinance, so far as it conflicts with the statute law is void. \* \* \**  
(Our emphasis)

Therefore, my answers to your questions are as follows:

*Question No. 1.*—In any city or town in the State of Indiana where an ordinance has been passed, specifically setting out that peddlers' licenses will not be issued, the provisions of Burns' 42-510, *supra*, are not nullified or lessened in any degree but remain paramount to such municipal ordinance on the matter of peddlers' licenses.

*Question No. 2.*—Where a county auditor issues a free peddler's license to a qualified veteran, that license shall be full and complete authority to vend, hawk and peddle in that county, and cities or towns therein situate, any municipal ordinance to the contrary notwithstanding.

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### OFFICIAL OPINION NO. 60

November 30, 1959

Mr. T. M. Hindman  
State Examiner  
State Board of Accounts  
Room 304, State House  
Indianapolis 4, Indiana

Dear Mr. Hindman:

I am in receipt of your recent letter requesting my Official Opinion as to the disposition of surplus funds received at a sale of land for delinquent real estate taxes and assessments. Your letter reads, in part, as follows:

“Pursuant to the provisions of Section 1, Chapter 92, Acts of 1949, Burns' 64-2101, the county treasurer is required to register all payments received in excess of the taxes and assessments due, which amounts constitute a special fund known as the 'Surplus Tax Fund.' This statute also provides a procedure for the refund of such excess or surplus payments, and further pro-

vides that if not claimed for a period of five (5) years after the first Monday in November of any year it shall be the duty of the county auditor to transfer any such unclaimed excess payments to the county general fund.

“In connection with the above cited statute, and the provisions of Burns’ 64-2208 governing surplus funds received at tax sale, your official opinion is requested on the following questions:

- “1. Do surplus funds received under the provisions of Burns’ 64-2208, paid into the county treasury, become a part of the ‘Surplus Tax Fund’ created under Burns’ 64-2101 and become subject to the provisions of the latter act?
- “2. If your answer to question 1 is in the negative, is there any statute which provides a method by which unclaimed surplus items received under Burns’ 64-2208 might otherwise be disposed of?”

The applicable statute pertaining to surplus moneys received at a sale of real estate for delinquent taxes is Acts of 1919, Ch. 59, Sec. 266, as found in Burns’ (1951 Repl.), Section 64-2208. This section reads as follows:

*“Where such sale is made, the purchaser at such sale shall immediately pay the amount of his bid to the treasurer, who shall pay the surplus, if any, to the person entitled thereto; or if he has doubt, or a dispute arises, as to the proper person, the same shall be paid into the county treasury. In case the purchaser fails to pay his bid, the land shall be again forthwith offered for sale the same as if no sale had been made, and the purchaser so failing shall forfeit and pay for the use of the common school fund of the county a penalty of twenty-five [25] per cent on the amount of his bid, to be recovered by action of debt in the name of the treasurer, before any justice of the peace, or court having jurisdiction and the prosecuting attorney shall conduct such suit, and, for his services, a fee of five dollars [\$5.00] shall be taxed against such delinquent purchaser.” (Our emphasis)*

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It is clear from the provisions of the above section that it is the duty of the county treasurer to pay the surplus, if any, of the sale in question to the "person entitled thereto" who would ordinarily be the delinquent taxpayer, his heirs, assigns, or someone holding a lien on the land. The statute further provides that if the county treasurer has any doubt as to the proper person entitled to this excess, he shall pay it into the county treasury. The foregoing provision was undoubtedly placed in the statute in order to protect the county treasurer from liability with regard to the repayment of any surplus moneys. In such a case it is apparently the responsibility of the person claiming such surplus to take appropriate legal action for its return.

With regard to your Question No. 1, you ask whether the surplus receipts referred to in Burns' 64-2208, *supra*, become a part of the "Surplus Tax Fund" as created by the provisions of Acts of 1919, Ch. 59, Sec. 254, as amended, as found in Burns' (1951 Repl.), Section 64-2101. The pertinent part of this section reads as follows:

"The county treasurer shall keep a register of taxes and assessments, in which he shall enter at the time of its reception, the amount of money received by him for taxes and special assessments from any person, company or corporation, the date of its reception, the name of the township, city or town in which such tax or assessment appears upon the tax duplicate, and the tax duplicate number; and he shall likewise enter each payment of taxes made and not to be accounted for by the treasurer upon the tax duplicate at either of the current year's semiannual settlements at the time of its reception in the register of taxes and assessments for the next succeeding year's May settlement. He shall also, in like manner, enter in said register all such payments received by him as are in excess of the amount of taxes and assessments due, and such excess payments shall be particularly designated therein. Such excess payments, if any, shall constitute a special fund, to be known as the Surplus Tax Fund, and all moneys entering therein shall be disbursed to the party entitled thereto, on the warrant of the county auditor, upon the filing and approval of a verified claim for the

refund thereof in the office of said auditor. At the time of each semiannual settlement, the treasurer shall prepare a schedule of all such excess payments received showing the name of the person, taxing unit and amount of excess paid and deliver such schedule to the county auditor. Such schedule shall be preserved as a permanent record in the office of the county auditor and if a refund of any such excess tax is made thereafter to any person entitled thereto, the auditor shall note thereon the date and amount of such refund, and shall further note the date and amount of each item paid into the general fund of the county. Provided, however, that if any excess payments shall have remained unclaimed for a period of five [5] years after the first Monday in November of any year by the party entitled thereto, it shall be the duty of the county auditor to transfer such unclaimed excess payments into the general fund of the county and such excess payments shall not be refunded thereafter. \* \* \*\*

An examination of the above section reveals that the "Surplus Tax Fund" is to be composed of amounts of moneys received by the county treasurer for taxes and special assessments from any person, company, or corporation in excess of the amounts and assessments due. The section further provides that such excess payments, if unclaimed for a period of five years, are transferred into the general fund of the county, after which time no claim can be made thereon.

However, surplus moneys received pursuant to Burns' 64-2208, *supra*, are *not* moneys received by the county treasurer "for taxes and special assessments from any person, company or corporation" in excess of the amounts and assessments due. In *Watkins v. Bagaloff et al.*, etc. (1956), 127 Ind. App. 99, 135 N. E. (2d) 736, the Appellate Court held that a purchaser at a tax sale is entitled to receive a 25% penalty only on the actual amount which is necessary to pay the taxes, penalties, interests and costs based upon the amount of delinquent taxes due, but such purchaser was not entitled to the 25% penalty on the total amount of his bid if such a bid exceeded the amount necessary to pay taxes, etc. The court stated that the statutory powers of the county treasurer precluded the real estate of a delinquent taxpayer from being

sold for more than lawful taxes, interests, penalties and costs; however, the treasurer is authorized to accept the surplus, thus giving the bidder at a tax sale an "opportunity to pay more than the amount of the lawful charges of the government against the delinquent taxpayer in the hope of receiving the high rate of 25% on the legally assessed delinquent taxes, interests, penalties and costs."

From the above it is apparent that the county treasurer does not receive an excess payment for taxes and assessments when he sells land at a tax sale, but rather he receives only the amount of lawful taxes, interests, penalties and costs. The surplus, if any, is merely collected by the treasurer in order that it may be paid out to the proper person or into the county treasury as provided by law.

Based on the above, I do not consider surplus moneys received pursuant to Burns' 64-2208, *supra*, as being within the scope of the "Surplus Tax Fund" created by Burns' 64-2101, *supra*, and therefore my answer to your Question No. 1 is in the negative.

In answer to your Question No. 2, I find no statute providing a method of disposal for unclaimed surplus items received pursuant to Burns' 62-2208, *supra*.

Research has disclosed that an analogous situation to the one in question was considered by our Supreme Court in the case of *State ex rel. Baldwin, Attorney General v. Taggart, Clerk* (1882), 88 Ind. 269. This was an action by the Attorney General of Indiana against the clerk of a circuit court for the recovery of certain unclaimed moneys in an estate. The circuit court had directed the clerk to pay such moneys at the time of the final settlement of the estate to certain known heirs. Our Supreme Court held that there was no law at that time which directed the clerk to dispose of such unclaimed funds other than pursuant to the instructions of the circuit court and, therefore, the Attorney General had no right to compel the clerk to pay such moneys to him. After reaching this conclusion, the Court stated:

"\* \* \* How long, in such a case, the surplus of an estate, or part thereof, ought to be allowed to remain unclaimed in the hands of the clerk is a question for

legislative action, and not for the decision of the courts.”

Therefore, in answer to your Question No. 2, it is my opinion that there is no statute which provides a means of disposal for unclaimed surplus items received under Burns' 64-2208, *supra*, and such items should be paid into the county treasury until the Legislature makes provision for their disposal and/or distribution.

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OFFICIAL OPINION NO. 61

December 1, 1959

Mr. J. B. Kohlmeyer, Director  
State Commission for the Reorganization  
of School Corporations  
Room B-4, Senate Chambers, State House  
Indianapolis, Indiana

Dear Mr. Kohlmeyer:

Your letter of November 6, 1959 has been received and reads as follows:

“As you know, Chapter 202 of the Acts of 1959, commonly called The School Corporation Reorganization Act of 1959, became effective July 20, 1959. As a consequence, County Committees for the Reorganization of School Corporations were not appointed and organized in sufficient time to prepare budgets and requests for funds as budgets are regularly prepared.

“In some counties, the Board of County Commissioners made provision for funds for the County School Reorganization Committee in their budget; in some counties the County Superintendent of Schools made provision for funds for the County Committee for the Reorganization of Schools in his budget. But in the main, most County Committees are without funds.

“County Committees for the Reorganization of School Corporations are asking us the following questions: