

"The appointment of Aikenhead as treasurer was to continue until his successor was qualified, and until this took place, ordinarily, his sureties would be bound. But Aikenhead was elected for a new term and ought to have given a new bond. It developed upon another officer of the law to see to this, and the sureties upon the bond may well have rested in security under the impression that the obligations of the law had been fulfilled. If another than Aikenhead had been elected and failed to qualify, so as to have continued the latter in office, the defendants would have been chargeable with notice, and indeed their continued liability would have been but an incident of their contract. *The state has no right to visit upon the defendants the effects of the laches of her own officer, whose duty it was to see that a new bond was given.*" (Italics the writer's.)

In view of the foregoing authorities, I am of the opinion that the bond of the county treasurer involved herein given for his first term is not liable for the treasurer's acts from the first Monday in September 1933 up to the present time.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3057.

INDIGENT—MAY NOT RECEIVE VOUCHERS TO PAY TAXES
CHARGED AGAINST PROPERTY OCCUPIED AND OWNED BY HIM.

SYLLABUS:

1. *Where a family has been found to be indigent but is occupying real estate owned by such indigent as a house, no part of which is leased, such indigent owner may not receive vouchers, to be used in payment of taxes charged against such property, under authority of Amended Senate Bill No. 200 (115 O. L. 194) as amended by Amended Senate Bill No. 53 of the First Special Session of the 90th General Assembly.*

2. *When the board of county commissioners have otherwise complied with Amended Senate Bill No. 200 (115 O. L. 194) as amended by Amended Senate Bill No. 53 of the First Special Session, they may during any month, issue vouchers pursuant to such act in an amount of not to exceed one twelfth of the annual tax levied against such property for the payment of any rent of such indigent accruing after June 20, 1933, but prior to March 1, 1935.*

COLUMBUS, OHIO, August 18, 1934.

State Relief Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your request for my opinion which reads as follows:

"We request your opinion on the legality of the following:

Where a family has been accepted and placed on the relief rolls for poor relief and is the owner of real estate and is occupying such real estate as his home, is such owner entitled to receive tax warrants under the provisions of Amended Senate Bill No. 200?

I do not see anything in Amended Senate Bill No. 200 that prohibits the issuance of tax warrants in payment of rents to owners where proper certification covering occupancy can be obtained on months occurring prior to the passing of the necessary resolution by the County Commissioners.

Where County Commissioners pass a Resolution appropriating the necessary sum and agreeing to operate under the provisions of Amended Senate Bill No. 200, can tax vouchers be issued for the months prior to the passing of said Resolution, dating back to May, 1933?"

Amended Senate Bill No. 200 (115 O. L. 194) as amended by Amended Senate Bill No. 53 of the first special session of the 90th General Assembly, authorizes the clerk of the board of county commissioners to issue warrants, in specified amounts, "for the rent" of an indigent person when—

(a) It is found that such indigent person is entitled to such type of relief.

(b) If the landlord or owner of the real estate occupied by the tenant agrees to accept them "for the rent" thereof (Sec. 3).

(c) The first mortgagor of such premises shall have agreed that he will not foreclose his mortgage on such premises without giving notice to the county commissioners at least 30 days prior thereto, so long as the indigent occupies the premises and the rent thereon is being so paid (Sec. 3).

In Sections 1, 3, 4 and 5 of such act as so amended, the legislature has specifically pointed out that such vouchers may be issued "for the rent" of an indigent person. Your inquiry resolves itself into a question as to whether, under the authority of such act as so amended, an indigent property owner, who occupies his property as a home for himself, may receive such warrants to be used for the purposes of paying his taxes on the premises so occupied.

There is a well established rule, with reference to the interpretation of statutes, that the words of a statute are to be taken in their ordinary and popular meaning, unless the language of the act itself shows that a different meaning was intended. 2 *Sutherland's Stat. Constr.* Section 389; *Black Int. of Laws*, Section 57; *Smith vs. Buck*, 119 O. S., 101, 105; *Keifer vs. State*, 106 O. S. 285, 289; *Woolford Realty Co., Inc. vs. Rose*, 286 U. S. 319.

What is the popular meaning of the word "rent"? At common law the term meant the amount of compensation reserved by the lord or land owner for the use of the premises by a tenant, whether such compensation was in the form of money, a portion of the fruits of the land, labor or military services. 3 Kent 461; Co. Litt. 47; 2 Blackstone's Commentaries, 41. From an examination of the cases, it would appear that the word is now used to designate that profit reserved to the owner of property whether in money, labor or a portion of the fruits of the property, for the right to its use by some person other than the owner. 2 Bouvier's Law Dict. 2880; *Vetter's Appeal*, 99 P. 52; *Fremont, Elkhorn & Mo. Valley R. R. Co., vs. Bates*, 40 Neb. 381; 16 R. C. L. 908; *Ballentine's Law Dict.* 1117.

Similar definitions are contained in Webster's New International and in Funk & Wagnall's Dictionaries. I am unable to find any decisions which would support an affirmative answer to your first inquiry. With reference to your

second inquiry, it might be well to set forth in full, Sections 4 and 5 of such act. Such sections read:

Section 4. "No voucher shall be issued under the provisions of this act for payment of rent for occupancy of any persons after March 1, 1935, but any vouchers or warrants issued as herein provided shall be honored if presented for the payment of taxes including those levied for the year 1934 but not thereafter."

Section 5. "The bureau of inspection and supervision of public offices may prescribe forms and issue instructions for the carrying into effect of this act. No rent due at the effective date of this act shall be paid by such vouchers and warrants."

The act itself provides that vouchers shall not be issued for rent accruing prior to the effective date of the act (June 20, 1933) nor after March 1, 1935.

Section 1, as amended, of such act makes specific provision as to the amount of rental vouchers that may be allowed each month. Such section reads:

"In addition to all other forms of relief, the commissioners of any county are authorized to appropriate the sum that said commissioners decide is necessary for the purpose of direct housing relief to indigent persons. Said commissioners may appoint the clerk of the board of county commissioners to investigate claims and demands for such relief. The clerk may issue a voucher to the auditor of the county each month for the rent of any indigent person whom he finds is entitled to such relief, which amount so allowed each month shall be not less than \$4.00 for a 2 room suite, \$5.00 for a 3 room suite, \$6.00 for a 4 room suite, \$7.00 for a 5 room suite and \$8.00 for a 6 or more room suite; but such voucher shall in no case exceed the sum of ten dollars per suite or single house, nor shall the total of such vouchers issued upon any one taxable property exceed in any one month one-twelfth of the total annual tax exclusive of special assessments upon such property for the preceding calendar year. Such voucher shall give the line and page of the book of the tax list of the county on which such property is entered and otherwise identify same as the auditor may direct and upon presentation of such voucher to the auditor, the auditor shall issue a warrant mentioning the property described in said voucher which shall be received by the treasurer on payment of taxes on the premises mentioned on said voucher. Said warrant shall not be negotiable or received by the treasurer in payment of taxes of any property except the property mentioned therein. At each semi-annual settlement between the treasurer and the auditor, the warrants that have been presented for the payment of taxes as herein provided shall be entered on a book provided by the auditor who shall deduct from each taxing subdivision the portion of the tax which is represented by said warrants and in making the settlement with each taxing subdivision amounts so deducted shall be entered upon same as taxes withheld for direct housing relief."

From the language of such section, it is evident that the voucher each month cannot exceed the amounts specified in such Section 1. In an opinion rendered by me under date of March 9, 1934 (Op. No. 2355, 1934 Opinions of the Attorney

General, p. 273) I held that the monthly vouchers if accepted must be in full of the rent for the current monthly rent and not as a part thereof (p. 274). I am unable to find any provision of such statute which would appear to limit the issuance of such vouchers to the current month's rent. The limitation of the statute is that such vouchers in any one month shall not exceed one twelfth of the taxes on the premises occupied by the indigent, and shall not be issued for rent accruing prior to June 20, 1933, nor after March 1, 1935.

Specifically answering your inquiry, it is my opinion that:

1. Where a family has been found to be indigent, but is occupying real estate owned by such indigent as a home, no part of which is leased, such indigent owner may not receive vouchers, to be used in payment of taxes charged against such property, under authority of Amended Senate Bill No. 200 (115 O. L. 194) as amended by Amended Senate Bill No. 53 of the First Special Session of the 90th General Assembly.

2. When the board of county commissioners have otherwise complied with Amended Senate Bill No. 200 (115 O. L. 194) as amended by Amended Senate Bill No. 53 of the First Special Session, they may during any month, issue vouchers pursuant to such act in an amount of not to exceed one twelfth of the annual tax levied against such property for the payment of any rent of such indigent accruing after June 20, 1933, but prior to March 1, 1935.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3058.

DEPOSITORY—BID VOID WHICH RESERVES TO BIDDER RIGHT TO ALTER DEPOSITORY CONTRACT UPON CHANGE IN DEPOSITORY STATUTES—COUNTY COMMISSIONERS MAY NOT ACCEPT SUCH BID FOR COUNTY DEPOSITORY.

SYLLABUS:

1. *When the board of county commissioners have advertised for bids for a county depository and in response thereto received a bid or bids at a lawful rate of interest, but subject to a reservation of the right to the bidder to alter the depository contract in the event of a change in the depository statutes; such reservation attached to the bid renders the bid void. It may not be accepted to create a depository on such terms (Section 2716, General Code).*

2. *When the board of county commissioners accepts a bid, void or illegal because of its terms, for a county depository, a contract executed embodying the terms of such bid is a nullity and does not create a depository even though other statutory provisions with reference to the establishment of county depositories are complied with.*

COLUMBUS, OHIO, August 18, 1934.

HON. W. J. SCHWENCK, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion reading:

"When the county received bids on April 24, 1933, for the establish-