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Our Indiana Constitution, Art. 2, Sec. 9, supra, and so ineligible to hold any other office meeting the same qualifications.

In 1 R. S. 1852, Ch. 76, Sec. 7, as amended, as found in Burns' (1951 Repl.), Section 49-3501, it is stated:

"** No person holding any lucrative office or appointment under the United States or under this state, and prohibited by the constitution of this state from holding more than one [1] such lucrative office, shall serve as a notary public, and his acceptance of any such office shall vacate his appointment as such notary **."

It having been determined that a member of a County Board of Public Welfare is an officer prohibited by the Constitution from holding more than one lucrative office, it is my opinion that Burns' 49-3501, supra, expressly prohibits him from serving as a notary public and that that office was vacated by his acceptance of the office of member of the County Board of Public Welfare.

OFFICIAL OPINION NO. 13

May 6, 1957

Honorable Joseph E. Klen
Lake County State Representative
6607 Marshall Avenue
Hammond, Indiana

Dear Representative Klen:

I have received your letter in which you requested an answer to the following:

"** whether or not a county commissioner, while holding office, may run for any other public office."

Our Indiana Constitution, Art. 7, Sec. 16, states:

"No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office."
It has been stated that a county is a subdivision of the state, organized for judicial and political purposes, 14 Am. Jur., Counties, § 3, and that, generally speaking, the function of a county is to serve as an agency or instrumentality of the state for purposes of political organization and local administration, 14 Am. Jur., Counties, § 5.

The Board of Commissioners, consisting of three (3) qualified electors, and acting as the corporate or public representative of the county, for the purpose of "transacting county business," (1 R. S. 1852, Ch. 20, Sec. 1, as amended, and found in Burns' (1948 Repl.), Section 26-601), occupies a unique position in organized county government.

In its status as a representative or agent of the county, it exercises executive, legislative and limited judicial powers. 14 Am. Jur., Counties, § 26.

Historically, the Board of County Commissioners in this state has always been held a judicial body. Our Supreme Court, in considering the nature of the County Board of Commissioners under the Indiana Constitution of 1816, concluded that such a board was to be held a court of record and that its acts could only be proved by the record. The State v. Conner & Others (1840), 5 Blackf. 325.

Very shortly after the adoption of the 1852 Constitution, the Supreme Court reiterated the ruling in the Conner case, supra, in Board of Commissioners of LaGrange County v. Cutler (1855), 7 Ind. 6.

In the case of McCabe v. Board of Commissioners of Fountain County (1874), 46 Ind. 380, the same Court said at page 382:

"There is little doubt that the board is a judicial tribunal."

The case of Hastings v. Board of Commissioners of Monroe County (1933), 205 Ind. 687, 188 N. E. 207, brought forth the most extensive statement by our Supreme Court on the nature of the Board of Commissioners. The Court said at page 691:

"* * * it should be kept in mind that a board of county commissioners is a court; that such boards belong to
the judicial department of the state; that they, like courts of general jurisdictions, look to the general assembly alone for administration or ministerial power."

The Appellate Court followed the rule of the Hastings case, supra, two years later in Board of Commissioners of Lake County et al. v. Woodward et al. (1935), 101 Ind. App. 142, 194 N. E. 735.

In the light of this historical background, there is little doubt that a member of a Board of County Commissioners is a judicial officer, even though some acts by such Commissioners are administrative or ministerial in nature.

And it has been held that where the Mayor of a City had jurisdiction as a judicial officer in addition to his other duties, voters were chargeable with notice of his ineligibility under the Constitution to any office other than a judicial one, during the term of his office as Mayor. Gulick v. New (1860), 14 Ind. 94; Waldo v. Wallace (1859), 12 Ind. 569; Howard et al. v. Shoemaker (1871), 35 Ind. 111.

It is, therefore, my opinion, upon consideration of the foregoing, that a member of the Board of County Commissioners, while holding office as such, is ineligible to any office other than a judicial office, even though he might run for same.

OFFICIAL OPINION NO. 14

May 9, 1957

Honorable Wilbur Young
State Superintendent of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Young:

Your letter of April 18, 1957, has been received and reads as follows:

"As a result of the provisions of Chapter 260 of the 1957 Acts which permit a consolidated school corporation operating under the jurisdiction of the County Superintendent of Schools to select their own superintendent and therefore sever all ties with the County School System, a serious problem exists in at least one