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.

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**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
county. When a township trustee is relieved of his duties of controlling the Township School Corporation or when he merely serves as a member of a school board with a superintendent other than the County Superintendent, he is no longer affected by any decision of the County Board of Education. Many trustees in this situation are failing to attend the monthly meetings of the County Board of Education. In at least one case it is virtually impossible for the County Superintendent to obtain a quorum of the Board for the purpose of transacting business, under the provisions of Chapter 164 of the 1951 Acts as amended, same being Burns' Indiana Statutes, Section 28-804a et seq.

"May I have your official opinion on the following question: Does the above Statute creating the County Board of Education mean that said Board shall consist of every township trustee in the County or only those trustees who are charged with the administration of the schools in their respective townships?"

Except as hereinafter noted, it is believed that your questions are answered by an Official Opinion found in 1953 O. A. G., page 131, No. 28, where the statute creating the County Board of Education is considered, being Acts of 1951, Ch. 164, Sec. 1, as found in Burns' (1955 Supp.), Section 28-804a, which prescribes: "The township trustees of each and every township of each county shall constitute a county board of education." In said Official Opinion the statute regarding the election of County Superintendent of Schools, Acts of 1899, Ch. 143, Sec. 1, as amended, as found in Burns' (1948 Repl.), Section 28-702, was fully considered, which prescribes: "The township trustees of each county of this state shall meet at the office of the auditor of their county on the first Monday in June, 1917 at ten o'clock a. m., and every four (4) years thereafter, and elect by ballot a county superintendent for their county." The date of such meeting has been changed by an amendment to the Acts of 1951, Ch. 164, Sec. 2, as made by the Acts of 1953, Ch. 247, Sec. 1, as found in Burns' (1955 Supp.), Section 28-804b, which reads as follows:

"The county board of education by a majority vote of the members of the board shall appoint a county
superintendent of schools who shall serve for a term of four (4) years. The first such appointment under this act [§§ 28-804a—28-804d] shall be made in accordance with law during the first fifteen [15] days of May nineteen fifty-three and each four [4] years thereafter, to be effective August sixteenth, nineteen fifty-three, and the board shall fill vacancies in this office, in accordance with law, by appointment which shall expire at the end of the regular term.

"County superintendents of schools heretofore elected or appointed by county boards of education now in existence as hereinbefore referred to, shall continue to hold such offices until their successors are elected and qualified under the provisions of this act."

The effect of the last statute only changes the date of the meeting for the election of such County Superintendent of Schools and provides the County Board of Education by a majority vote shall make such election; however, since it is composed of the township trustees, there is no material change in that respect.

The foregoing Official Opinion, in answer to the 7th question there presented, specifically considers the effect upon the school system of consolidations and schools having their own superintendents, and concludes that while the township trustees in such areas having consolidated schools and which schools have their own superintendents, they still are members of the County Board of Education and are entitled to vote for the election of the County Superintendent of Schools. In the case of Wampler v. State ex rel. Alexander (1879), 148 Ind. 557, 47 N. E. 1068, it was held that mandate will lie to compel a township trustee to meet with the other trustees to elect a County Superintendent of Schools. This remedy of action of mandate is still available for such purpose except as hereinafter indicated.

In a recent Unofficial Opinion of this office, concerning the status of the County Superintendent of Floyd County, as well as the status of a County Board of Education of said county, issued at a time subsequent to a complete consolidation of a consolidated school composed of all the townships in the county with the School City of New Albany, thereby including all
the school area of the county, and which new consolidated school had its own superintendent and took on the classification of a city school corporation, it was held that the County Board of Education ceased to exist by operation of law due to the fact that it had no functions or duties whatever to perform; that the then present County Superintendent of Schools, having a four-year term of office, would be considered to continue in office until the expiration of his term, even though he had no functions or duties to perform. However, it is to be seen that on the expiration of such term there would be no legally constituted body remaining, i.e. the County Board of Education, to elect his successor, and none would seem to be indicated as needed.

From the foregoing, I am of the opinion that where there still remains some school corporation in the county so legally constituted as to require the services of the County Superintendent of Schools, that each of the township trustees of each of the townships in such county must meet at the designated time and place and vote for the election of a County Superintendent of Schools. Their failure to do so is enforceable by an action of mandate as indicated by the foregoing Supreme Court decision. Where all of the area of a county is occupied by either consolidated school corporations having their own superintendents and under statutes making them independent of the office of the County Superintendent of Schools, or having school boards created under the Acts of 1957, Ch. 260, or other statutes, under which they have superintendents of schools and so organized as to take them without the jurisdiction of the County Superintendent of Schools, then and in such events the County Board of Education would, by operation of law, cease to exist and the requirement of the election of a County Superintendent of Schools be obviated, by operation of law—the reason in the latter instances being there are no functions or duties thereafter to be carried out by a County Superintendent of Schools. However, should there still be functions and duties in any county to be carried out as to any school corporation by such County Superintendent of Schools, his election is required by statute and the members of the County Board of Education could be mandated by the Court to meet and elect such County Superintendent of Schools.