

Burns' Indiana Statutes, Section 64-1019 (a), *supra*. If no such petition is filed in the year 1957, then the state tax board, in the exercise of its discretion may thereafter, during 1957, proceed under Burns' Indiana Statutes, Section 64-1019 (b), *supra*.

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OFFICIAL OPINION NO. 16

April 9, 1956

Mr. Doxie Moore  
Administrative Assistant to the Governor  
206 State House  
Indianapolis 4, Indiana

Dear Mr. Moore:

We have received your letter of March 2, 1956, which reads as follows:

"I would like to have your opinion on the following question:

"Does a member of a state correctional institution Parole Board, who wants to run for the State Legislature, have to resign as a Parole Board member before he runs for the Legislature, or does he have to resign only if he is elected to the State Legislature, or can he serve in both positions at the same time?"

Inasmuch as you raise three separate questions, I will answer them in the following order:

(a) May one serve as a member of the Parole Board of a state correctional institution and as a State Legislator at the same time?

(b) Must such member of the Parole Board resign his position in order to run for election for State Legislator?

(c) Or can such Parole Board member run for the office of State Legislator and, if elected, resign his office as Parole Board member in order to assume his role as Legislator?

The Indiana Constitution, Art. 2, Sec. 9, provides in part as follows:

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“No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted \* \* \*.”

The Indiana Constitution, Art. 3, Sec. 1, further provides:

“The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial; *and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.*” (Our emphasis)

It has been held that:

“\* \* \* An office is a public charge or employment in which the duties are continuing, and prescribed by law and not by contract, invested with some of the functions pertinent to sovereignty, or having some of the powers and duties which inhere within the legislative, judicial, or executive departments of the government. An emolument is a usual, but not a necessary element thereof.”

Wells v. The State of Indiana *ex rel.* Peden (1911),  
175 Ind. 380, 384, 94 N. E. 321.

The creation and formation of separate Parole Boards for several of the State's institutions is authorized by the Acts of 1953, Ch. 266, Sec. 27, as found in Burns' Indiana Statutes (1942 Repl., 1955 Supp.), Section 13-1527 *et seq.* Set out in these statutes are the powers and duties of such Board, and it is clearly demonstrated that such duties are of a continuing nature and are prescribed by law and not by contract. Without spelling out all of the powers and duties of such Parole Board, the duties to determine a prisoner's fitness for parole and to determine which prisoner might be released on parole, certainly denotes that such Board members are invested with some of the functions pertinent to sovereignty. In addition, there is an emolument provided for in the above mentioned statute, and it is noted that such Board member is appointed

to serve by and at the pleasure of the Governor. We conclude, therefore, that a member of the Parole Board of one of these correctional institutions is the holder of a "lucrative office" within the meaning of the Indiana Constitution, Art. 2, Sec. 9, *supra*.

The fact that a member of the Indiana Legislature holds a "lucrative office" as such and also exercises functions of the Legislative Department of the State Government is too well established to require citation of authority. In view of the nature of the powers and duties conferred upon members of Parole Boards, as set out above, I am also of the opinion that a member of a Parole Board holds a lucrative office and also exercises functions in the Executive Department of the State Government. Therefore, both Art. 2, Sec. 9 and Art. 3, Sec. 1 of the Indiana Constitution would prohibit a member of a Parole Board from holding the office of a member of the General Assembly at the same time.

Turning now to the first sentence in the quotation from the Indiana Constitution, Art. 2, Sec. 9, *supra*, I am of the opinion that the answer to your second question turns upon the construction of the words, "eligible to a seat in the General Assembly." Does "eligible" refer to holding the office or to the running for office, or both?

The constitutional meaning of the word "eligible" has been considered by the Courts several times and it is established that the word "eligible" as used in the Indiana Constitution, Art. 7, Sec. 16, means disqualification from the office at the time when the term of office begins and has no application to qualifications at the time of the election.

Smith v. Moore (1883), 90 Ind. 294;

Vogel v. The State *ex rel.* Land, Prosecuting Attorney (1886), 107 Ind. 374, 8 N. E. 164;

Brown v. Goben, Auditor (1890), 122 Ind. 113, 23 N. E. 519;

Shuck v. The State *ex rel.* Cope (1893), 136 Ind. 63, 35 N. E. 993;

Hoy, Mayor v. State *ex rel.* Buchanan (1907), 168 Ind. 506, 81 N. E. 509.

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The case of *Brown v. Goben, supra*, considered the meaning of the word "eligible" as used in the Indiana Constitution, Art. 2, Sec. 10, and held that it referred to eligibility to hold office and not to eligibility to run for office. Upon the authority of *Kirkpatrick v. King et al. (1950)*, 228 Ind. 236, 91 N. E. (2d) 785, the general rule is that the same words occurring at different places in a Constitution will be given the same meaning unless the context requires a different meaning. Inasmuch as Art. 2 of the Indiana Constitution deals with the subject of suffrage and elections, it is believed that the construction our Supreme Court has given the word "eligible" in Section 10 thereof, is likewise applicable to the meaning of the word "eligible," as used in the immediately preceding Section 9.

It is, therefore, my opinion that the language of the Indiana Constitution, Art. 2, Sec. 9, *supra*, in the first sentence thereof, carries the same meaning of "eligible" as does the same word as used in Art. 2, Sec. 10 and Art. 7, Sec. 16; that Art. 2, Sec. 9, *supra*, does not prohibit a holder of the lucrative office of a member of a Parole Board for a State correctional institution enumerated under Burns' 13-1527, *supra*, from running for the office of member of the General Assembly or being elected thereto.

In view of the foregoing, I believe that the third restated question is answered by pointing out that since the Parole Board member is not prohibited from running for the office of Legislator or from being elected thereto, but that he is prohibited from holding two lucrative offices under the Constitution, as well as by the Doctrine of Separation of Powers and he necessarily must resign from the former before entering upon the duties of the latter; if he did not so resign, prior to entering upon the duties of the office of Legislator, at such time as he undertook his legislative duties, he would be deemed to have resigned by operation of law.

We would recommend, however, that the person referred to in your letter should himself resign from his position with the Parole Board prior to his undertaking the legislative duties.

Therefore, my answer to your question is as follows:

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A member of a State Correctional Institution Parole Board who wishes to run for the State Legislature, need not resign as a Parole Board member before he runs for election to the Legislature; however, he cannot serve in both positions at the same time and should resign from the Parole Board prior to the time that he enters upon his duties as a member of the State Legislature.

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OFFICIAL OPINION NO. 17

April 10, 1956

Honorable William H. Herring  
State Representative  
P. O. Box 86  
Linton, Indiana

Dear Representative Herring:

We have received your letter requesting my Official Opinion which reads as follows:

"I request an official opinion on the following question:

"(1) Can the Common Council of a fifth class city fix the retirement age of a police officer who is not participating in the police pension fund?"

The Acts of 1905, Ch. 129, Sec. 170, as amended, as found in Burns' Indiana Statutes (1950 Repl.), Section 48-6120, reads, in part, as follows:

"\* \* \* And, in such cities of the fifth class, the common council may provide, by ordinance, for the exercise by committees of such council of all functions in this act provided to be exercised by boards of public safety, so far as applicable; and may also provide, by ordinance, for the exercise by the mayor of the functions provided by law to be exercised by the boards of public safety relating to the appointment, suspension, and discharge of all members of the police force; and may also provide for the compensation of all the members of such forces."