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1933, Ch. 233, Sec. 8, as last re-enacted in 1955, Ch. 346, Sec. 1, was modified in the same manner as the original enactment in 1933.

It is, therefore, my opinion that a Mayor of a fifth class city may decline to serve as City Judge.

OFFICIAL OPINION NO. 3

January 31, 1956

Mr. A. L. Fossler, Chairman
State Board of Tax Commissioners
Room 301, State House
Indianapolis, Indiana

Dear Mr. Fossler:

This is in reply to your request for an Official Opinion which reads as follows:

“This Commission has received numerous requests for a definite ruling as to whether the assessors of Indiana should or should not assess the property of certain service personnel for the purpose of establishing a charge for ad valorem taxes. Therefore the State Board of Tax Commissioners requests your official opinion based on the following conditions:

“In view of the recent decision of the Supreme Court of the United States in the case of *Dameron v. Brodhead*, 1953, 345 U. S. 322 interpreting the *Soldiers and Sailors Relief Act*, 54 Stat. 1186, as amended, 56 Stat. 777, 58 Stat. 722, 50 U. S. C. App., Sec. 501 *et seq.*, relative to the assessment and taxation of property of non-resident servicemen, stationed in Indiana, under Military orders, we would appreciate answers to the following questions:

“1. Is the personal property of a serviceman, located in Indiana, whose permanent residence is outside of Indiana, subject to assessment for taxation in Indiana?

“2. Does the purchase of Indiana license tags

by a non-resident serviceman temporarily stationed within the State, subject the personal property (including motor vehicle) located in Indiana to assessment for taxation in Indiana?

“3. Can the permanent residence of a serviceman be changed during the period he is in active duty?

“4. Does the purchase of Indiana license tags by a non-resident serviceman, temporarily stationed within the State, subject the motor vehicle located in Indiana to assessment for taxation in Indiana?

“The answers to these questions are needed by our department as expeditiously as possible so that we may give the proper instructions to assessing officials at our district meeting convening February 3rd.”

Section 514 of the Soldiers' and Sailors' Relief Act, 54 Stat. 1178, as amended, 56 Stat. 777, 58 Stat. 722, 50 U. S. C. A. Appendix, Section 574, provides as follows:

“(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purpose of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in

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which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

“(2) When used in this section, (a) the term ‘personal property’ shall include tangible and intangible property (including motor vehicles), and (b) the term ‘taxation’ shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.”

As you state in your letter, the above-quoted statute was considered in *Dameron v. Brodhead* (1953), 345 U. S. 322, 73 S. Ct. 721, 97 L. Ed. 1041. In that case the facts were that the City and County of Denver, Colorado, assessed a tax on the personal property of a serviceman who was a citizen and resident of the State of Louisiana, assigned to duty at Lowry Field near Denver, Colorado. The serviceman paid the tax under protest and sued to recover.

The taxing authorities of the City and County of Denver contended that the statute was unconstitutional and, in any event, that it was intended only to prevent multiple taxation and thus would not apply to cases where the State of original residence did not tax the property involved. The United States Supreme Court held that the statute was constitutional and that there was no suggestion in the statute that the State of

original residence must have imposed a property tax. Thus, this statute saves the sole right of taxation to the State of original residence whether or not that state exercised the right.

In view of the foregoing, my answer to your first question is as follows:

1. Except for personal property used in or arising from a trade or business, the personal property of a serviceman, located in Indiana, whose permanent residence is outside of Indiana, shall not be deemed to be located or present in or to have a situs for taxation in the State of Indiana and hence would not be subject to assessment for taxation in Indiana, solely by reason of such serviceman being present in Indiana under military orders.

With respect to your second question, I have searched the motor vehicle laws of this State and find nothing therein indicating that the purchase of Indiana license plates would, in and of itself, subject the personal property of a non-resident to taxation in Indiana or be conclusive of the fact that such person had acquired a residence in Indiana.

It is true that the Acts of 1945, Ch. 304, Sec. 25, as amended, and found in Burns' Indiana Statutes (1952 Repl., 1955 Supp.), Section 47-2602, provides in part as follows:

"Every person, who is the owner of a vehicle of the type to be registered hereunder, shall apply to a branch office, established by the commissioner in which said owner is a *resident*, for and obtain the registration of such vehicle. * * *" (Our emphasis)

However, the mere fact that a person had applied to a branch office for registration plates, under and pursuant to this statute, would not, in my opinion, be conclusive of the fact that he had changed his residence or domicile to Indiana so as to remove him from the purview of the Soldiers' and Sailors' Relief Act, *supra*. It has been held that:

"For the purposes pertaining to registration of motor vehicles a person may be a resident of more than one state."

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Morse v. Lash Motor Co., Inc. (1927), 107 Conn. 137,
139 A. 637, 638.

I am not informed as to why the servicemen about whom you inquire have obtained Indiana registration plates for their automobiles. However, since a person may, for the purpose of registering a motor vehicle, have a residence in more than one state, I do not believe that the purchase of Indiana registration plates, in and of itself, would remove these servicemen from the protection of the Soldiers' and Sailors' Relief Act for purposes of taxation.

In view of the foregoing, my answer to your second and fourth questions is as follows:

2 and 4. The purchase of Indiana license tags by a non-resident serviceman temporarily stationed within the State does not, in and of itself, subject either the motor vehicle located in Indiana or the other personal property of such serviceman within this State to assessment for taxation in Indiana. However, this would not apply if the motor vehicle or other personal property were used in or arising from a trade or business.

With respect to your third question, please be advised that a serviceman could change his permanent residence during the period when he was on active duty. For a general discussion of this question, see 17 Am. Jur., Domicile, § 73 Soldiers and Sailors on page 634. However, whether a serviceman had changed his permanent residence or domicile would depend entirely upon the facts and circumstances of each case and, to a considerable extent, would involve the intent and volition of the particular serviceman with respect to the abandonment of his former domicile or residence and the acquisition of the new domicile or residence. The change of residence or domicile would also have to be shown by clear and unequivocal evidence.

Therefore, it is impossible for me to lay down a general rule in answer to your third question. If you have any specific instances or sets of facts pertaining to change of residence by any particular serviceman, I will be happy to discuss the same at your convenience.