the principle that in such instances the words ‘power’ and ‘authority’ may be construed as ‘duty’ and ‘obliga-

Since the Legislature, under the foregoing statute, has pre-
scribed the duties and functions of the board of trustees and
officers of the Indiana State Teachers’ Retirement Fund, I am
of the opinion that such requirements must be complied with
and that the plan suggested in your letter is not authorized.

If the foregoing duties are found, on experience, to be overly
exacting or impractical, the only remedy is relief by the Legis-
lature.

OFFICIAL OPINION NO. 23
March 24, 1954
Hon. Eugene Bainbridge
State Senator
8309 Northcote Avenue
Munster, Indiana
Dear Senator Bainbridge:

This is in reply to your letter of March 9, 1954 in which you
inquired as to the following:

May the Mayor of Whiting, Indiana, run for nomination for the office of the Auditor of Lake County?

Your letter further states that the Mayor’s term of office expires December 31, 1955, and that there is now and there
has been for the past thirty (30) years a City Judge in the
City of Whiting who is nominated and elected.

The Indiana Constitution, Art. 7, Sec. 16, provides as fol-
lows:

“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.”

The question as to whether the Mayor of a city was the

In the Acts of 1857, the following provision was found:

“If the common council shall deem it expedient for the interests of such city to cause a city judge to be elected, the same may be done at any general election at which the mayor shall also be elected, and such city judge shall give the like bond as the mayor is herein required to give, and he shall, from and after his due qualification, perform all the judicial duties herein required to be performed by the mayor.”

In the 1867 Acts this provision was omitted. In the above-cited case at page 115, the Honorable Judge Downey said: “Under this provision in the Act of 1857 it is quite clear that when the city council had ordered the election of a city judge, and he had been elected and qualified from that time the Mayor was relieved of his judicial duties.”

In the case of McNulty v. Connew (1875), 50 Ind. 569, the Court by dicta inferred that the Mayor still had judicial duties by virtue of the fact that the powers given the city judge were the same powers given the Mayor, and, therefore, the Mayor had concurrent jurisdiction along with the city judge.

The Acts of 1933, Ch. 233, Sec. 8, as amended, as found in Burns' Indiana Statutes (1950 Repl.), Section 48-1219, provides, in part, as follows:

“In (fifth class cities) such cities the Mayor shall act as city judge * * *.”

The Acts of 1951, Ch. 26, Sec. 1, as found in Burns' Indiana Statutes (1946 Repl., 1953 Supp.), Section 4-2811, provides:

“There shall be and hereby is established a city court in fourth and fifth class cities, not county seats, having an assessed valuation of property in excess of twenty-six million dollars ($26,000,000), situated in townships having two (2) or more second class cities, which fourth or fifth class cities have heretofore for ten (10)
years or more last past had a city court. Said court shall have jurisdiction and be subject to law as is now provided for fourth class cities which are not county seats; and shall further be subject to law as is now applicable to city courts in fourth class cities generally, and the judge of said court shall be elected as is now provided by law for cities which elect city court judges. The salary of said judge shall be two thousand dollars ($2,000) per annum."

According to the 1950 census, Whiting is the only city meeting the qualifications of this section.

The Attorney General (1948) stated that, in his opinion, a person who was elected to a judicial office could not resign and be elected to another office, not judicial, if the term for which he was originally elected would not expire prior to the commencement of the beginning of the subsequently elected office. (1948 O. A. G., page 188, No. 33.)

In 1951 in an opinion to the State Election Board, it was stated by the Attorney General that the Mayor of East Chicago was not a judicial officer. This opinion was based on the theory that the Mayor had no judicial function to perform, by virtue of the fact that the statutes provided for the establishment of a city court in East Chicago. (1951 O. A. G., page 68, No. 26.)

In view of the foregoing, it appears that the City Judge of the City of Whiting performs all the judicial duties which would otherwise be performed by the Mayor of said city. Therefore, the Mayor performs no judicial duties and is not a judicial officer or a person elected to a judicial office.

In my opinion, the Mayor of Whiting, Indiana, may lawfully run for the nomination for the Office of Auditor of Lake County.