

OPINION 34

Guadalupe County v. Poth (1914), — Tex. —, 163
S. W. 1050, 1051.

Also see definitions of the word "town" found in Words and Phrases, Volume 42, pp. 164 to 186.

Therefore it is my opinion that the term "town" used in the statute in question includes an unincorporated as well as an incorporated town. Any community which can be brought within the meaning of the word "town" as herein defined would meet the statutory requirement as to the place where a branch bank may be established. The right to establish a branch bank is purely statutory and, of course, all other statutory requirements would have to be met.

I believe this answers both of your questions.

OFFICIAL OPINION NO. 34

May 11, 1953.

Mr. R. R. Wickersham, Examiner,
State Board of Accounts,
302 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 30, 1953 has been received requesting an official opinion on the following question:

"Would membership on the School Board of a city and on the Board of Trustees of a county hospital operating under the provisions of Chapter 144, Acts 1917 (22-3215 to 22-3242, Burns' R. S.) be considered lucrative offices within the meaning of the constitution (Art. 2, Sec. 9)?"

Article II, Section 9 of the Constitution of Indiana reads in part as follows:

"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: * * *.”

Sections 22-3215 to 22-3242, Burns' Indiana Statutes Annotated (1950 Replacement) is Chapter 144, Acts 1917, as amended. An examination of the contents of said statutes shows on petition of a certain number of resident freeholders of the county an election is held to determine if a county hospital is to be established, or on petition of thirty per cent (30%) of the resident freeholders of the county the Board of County Commissioners may establish such a hospital. In any event the hospital is established by the Board of County Commissioners and the cost of construction, maintenance, repair or enlargement thereof is paid for by an annual tax levy, in connection with which County Bonds may be issued. Trustees of the hospital are appointed pursuant to Section 22-3217, Burns' Indiana Statutes Annotated (1950 Replacement). The trustees are required to take an oath of office and any person handling money is required to be under bond. Their salary runs from one hundred and twenty dollars to one hundred and eighty dollars per year. They are required to file annual reports to the County Board of Commissioners concerning the fiscal affairs of such institution. Section 22-3218, Burns' Indiana Statutes Annotated (1950 Replacement) in part provides as follows:

“* * * Said board of hospital trustees shall have power to appoint a suitable superintendent who shall appoint and discharge all necessary employees and such board shall fix the compensation of all hospital employees, and shall in general carry out the spirit and intent of this act in establishing and maintaining a county public hospital with equal rights to all and special privileges to none. * * *”

From an examination of said statute in its entirety I am of the opinion that any such hospital is a county hospital rather than a state hospital. That the functions and duties of the Board of Trustees is municipal in character rather than state.

The functions and duties of the trustees of said institution are analogous to the position of superintendent of the county asylum considered in the case of State *ex rel.* Wickens, Prose-

OPINION 34

cutor v. Clark (1935), 208 Ind. 402, 404 to 409, 196 N. E. 234. In that case the County Board of Commissioners retained general supervision and control over the institution. It was there held that the superintendent of the county asylum was a county employee. While the trustees under the present statute are officers, they are in my opinion still county officers rather than state. I fail to find in the definition of their duties where they exercise any of the sovereign powers of the state in connection with such duties.

In the case of Chambers v. State *ex rel.* Barnard, Prosecuting Attorney (1890), 127 Ind. 365, 367, 26 N. E. 893, 11 L. R. A. 613, it is held that municipal offices are not lucrative offices within the meaning of the above constitutional provision unless they are charged with duties under the state laws. While this statute is a state statute, the duties are in the nature of county duties rather than state functions.

The last cited case holds that the office of a school trustee is a lucrative office within the meaning of said constitutional provision.

If a public office is to come within the provision of the above constitutional amendment it must involve an exercise of some portion of the state sovereign powers. See 1949 O. A. G., pp. 373, 374, Official Opinion No. 98.

I am therefore of the opinion that the office of a member of the school board of a city is a lucrative office within the meaning of Article II, Section 9 of the Constitution, but that a member of the Board of Trustees of a county hospital operating under the provisions of Chapter 144 of the Acts of 1917, as amended, is not a lucrative office within the meaning of such constitutional provision.