

by ordinance to create a board of trustees for the control and management of the public parks of such city. I am not informed as to whether the City of Monticello is operating its parks by the city council or whether it has created a board of trustees for that purpose under said Act of 1917.

However, it is my opinion that in either event, such land would be within the provisions of Section 7 of Chapter 135 of the Acts of 1945. Assuming that the City of Monticello owns the land in question in fee simple and that there is nothing in the chain of title which would prevent the city from doing so, it is my opinion that it may donate said land to the State Armory Board for an armory site.

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OFFICIAL OPINION NO. 62

October 4, 1948.

Hon. Edwin Steers, Sr.  
 Member State Election Board,  
 108 E. Washington Bldg.  
 Indianapolis, Indiana.

Dear Sir:

Your letter has been received requesting an official opinion as to whether or not a town trustee vacates his office by moving from one ward to another within the corporate boundaries of said town.

Section 48-115, Burns' 1933, being Section 1, Chapter 41, Acts 1917, provides in part as follows:

"The elective officers of every town shall be one (1) trustee from each ward \* \* \*. Provided, each trustee shall be voted upon by all the electors of the town, but shall be a resident of the ward for which he is elected: \* \* \*."

An examination of the Constitution of Indiana and of the statutes fails to reveal any requirement as to continued residence in the particular ward from which such town trustee was elected. The only constitutional requirement as to residence of local officers is provided by Article 6, Section 6, of the Constitution of Indiana, which reads as follows:

"All county, township, and town officers, shall reside within their respective counties, townships, and towns; and shall keep their respective offices at such places therein, and perform such duties, as may be directed by law."

It has been held in foreign jurisdictions that public officers vacate their office on permanently removing their residence from the state or district in which they are serving.

42 Am. Jur. "Public Officers," Sec. 46, p. 816  
Anno.; 120 A. L. R. 672, 676.

The more applicable cases under the foregoing authorities are *State ex rel. Johnston v. Donworth* (1907), 127 Mo. App. 377, 380; 105 S. W. 1055, and *People v. Ballhorn* (1902), 100 Ill. App. 571, 573, which are to the effect that municipal officers elected from a ward are not eligible to serve on changing their residence to some other ward in the municipality.

The case of *In Re. Mosness* (1876), 39 Wisconsin 509, 510, 511, announces the principle that an attorney being an officer of the court, is in a sense an officer of the state for which the court acts, and that continued residence in the state is necessary to protect a member of the bar of the state.

However, an examination of the Indiana authorities reveals that prior to the amendment of the statute so as to require continued residence for city councilmen in the ward from which they were elected, the Indiana Supreme Court held that removal of a city councilman from the ward did not have the effect of vacating the office.

*State ex rel. Hartford v. Craig* (1892), 132 Ind. 54, 31 N. E. 352.

The last referred to case was followed by the case of *Rugunin v. Madison School Township of Daviess County* (1940), 108 Ind. App. 573, which involved the question as to whether or not a consolidated school trustee who was required to be a resident of the township on appointment, could continue to serve on moving his residence into the town which was a part of such consolidated school district. On page 578 of the opinion, the court said:

“While the statute provides that in the selection of trustees to control and manage consolidated schools one such trustee shall be selected from the township outside the corporate limits of the town, it will be noted that such statute does not require continuous residence therein following such appointment. It is our opinion, therefore, that the removal of such trustees from the township into the incorporated town does not of itself have the effect of creating a vacancy in such office. The duties of the trustee of a consolidated school are co-extensive with the territorial limits of the township in which such consolidated school is located. He is not an officer of the township exclusive of the territorial limits of the town.

“It has been held by our Supreme Court in the case of *Smith v. State* (1865), 24 Ind. 101, that the removal of a county commissioner from the district where he resided at the time of his election into another district in the county does not operate to vacate the office. Here the court said:

“The previous residence within a particular district has secured in the candidate a local knowledge of the peculiar wants and requirements of that district, and the legislature have deemed this sufficient, without requiring a continued residence within the same limits.’”

The foregoing reasoning is clearly exemplified by the Supreme Court of Indiana in the case of *Connell v. State ex rel.* (1925), 196 Ind. 421, which involved the validity of the election of a city councilman on the grounds that he was not a citizen of the United States. On pages 425 and 426 of the opinion the court said:

“The legislative authority of the State shall be vested in the General Assembly’ (Art. 4 Section 1, Constitution, Section 104 Burns’ 1926, Section 97 Burns’ 1914), and that body is supreme and sovereign, except so far as its power is limited by some provision of the State Constitution, or by the Federal Constitution or treaties made or acts of Congress passed under its authority. *State ex rel. v. Menaugh* (1898),

151 Ind. 260, 266, 51 N. E. 117, 43 L. R. A. 408, 418; Hanly v. Sims (1910), 175 Ind. 345, 356, 93 N. E. 228; Carr v. State (1911), 175 Ind. 241, 246, 93 N. E. 1071; 32 L. R. A. (N. S.) 1190; Lafayette, etc., R. Co. v. Geiger (1870), 34 Ind. 185, 196. Therefore, except so far (if at all) as the Constitution may have prescribed the qualifications of public officers, or otherwise limited the legislative authority, the power of the legislature to create municipal offices and to fix the qualifications of those who shall fill them is unrestrained.

“The Constitution of the United States prescribes no qualifications for any state or municipal officers, but only for representatives in congress, for senators and for the President. Art. 1, Sections 2, 3, and Art. 2, Section 1, U. S. Constitution; Sections 2, 3, 11 Burns’ 1926; Sections 2, 3, 11 Burns’ 1914.

“And the Constitution of the State of Indiana requires that state senators and representatives and the Governor shall be citizens of the United States. Art. 4, Section 7, and Art. 5, Section 7, Constitution; Sections 110, 140 Burns’ 1926; Sections 103, 133 Burns’ 1914. But, as to county officers, it only requires that they shall be electors of their respective counties and inhabitants thereof for one year. Art. 6, Section 4, Constitution; Section 161, Burns’ 1926; Section 154, Burns’ 1914.) And no qualifications are prescribed for town (city) and township officers at and prior to the time of their election, but only that they shall reside in their respective towns (cities) and townships, and keep their offices therein. Art. 6, Section 6, Constitution; Section 163, Burns’ 1926; Section 156, Burns’ 1914.”

From the foregoing, I am of the opinion the question as to whether or not a town trustee is required to continue his residence in the ward from which he was elected is one to be prescribed by the legislature rather than one for construction by the court, and that under the foregoing authorities a trustee of a town does not vacate his office by moving from one ward to another within the corporate boundaries of said town.