

It becomes apparent in view of the foregoing that an appropriation exists only for one year, and that after that time there is no available money appropriated against which warrants may be drawn by the county auditor.

This opinion does not consider the question of money left to the hospital by devise, bequest, gift or in any manner other than funds raised by tax levy for hospital purposes. It is my opinion that those funds which are raised by tax levy for hospital purposes may not be expended by the trustees of such hospital, unless there is an annual appropriation of such funds by the county council for hospital purposes.

OFFICIAL OPINION NO. 12

Februray 17, 1948.

State Election Board,
State House Annex,
Indianapolis 4, Indiana.

Gentlemen:

I acknowledge receipt of your letter of January 21st in which you ask my official opinion upon the following questions:

“1. Whether or not a councilman is eligible or qualified to take an oath of office after he has moved from his ward.

“2. Whether a councilman, who has moved from his ward, is eligible to serve as such councilman for such ward while living outside such ward.

“3. If the law holds that the councilman in question is ineligible to qualify and take his oath of office after he has moved from his ward, and if the law further holds that such councilman is ineligible to serve as a councilman, if not a resident of the ward from which he was elected, would the acts of such councilman, while serving in the council, be lawful and with authority; and would the acts of the council be binding on the city?

“4. If such councilman from the Third Ward shall be ineligible to take office, would the councilman in

office from said ward hold over by virtue of the Constitution of Indiana, Sec. 3, Art. 15?"

I call your attention to Official Opinion No. 11, given to you on March 31, 1947. In this opinion it was held that residence within the district is a condition precedent to eligibility of a councilman elected from that district and that removal from the district after election and qualification would vacate the office.

I call your attention to the fact that residence in this regard is synonymous with domicile and implies a permanent removal from the district. See *Brownlee v. Duguid* (1931), 93 Ind. App. 266. I assume, therefore, for the purposes of this opinion that the councilman in question has actually and permanently changed his domicile to another district and his present place of abode in the other district is not a temporary sojourn.

In *State, ex rel. v. Slack* (1928), 200 Ind. 241, the facts were that Duvall was elected to the office of mayor of Indianapolis and that his predecessor, Shank, surrendered the office to Duvall upon his qualification. The plaintiff maintained that Duval was disqualified at the time he took office and founded his complaint upon the fact that Duval never became mayor because of his disqualification. The court said:

“At the Indianapolis city election of 1925, Duvall received the highest number of votes, a certificate of election was issued to him, and he duly qualified as mayor on January 4, 1926, and Shank relinquished to him said office. Although Duvall’s election was subject to contest and his title as evidenced by the certificate of election was defeasible by reason of his ineligibility, nevertheless such election and qualification were sufficient to vest him with color of title to said office and thereupon terminate Shank’s tenure of office within the meaning of the statute prescribing the term of the office of mayor. * * *.”

See also:

Hay v. White (1930), 201 Ind. 425;
Couch v. State (1907), 169 Ind. 269;
State, ex rel. v. Bemenderfer (1884), 96 Ind. 374;
McGurk v. State, ex rel. (1930), 201 Ind. 650.

Thus by the surrender of the office by his predecessor and the qualification of the incumbent in question, the term of the office of the predecessor was terminated and the incumbent in question became a *de facto* councilman. See also *Terre Haute v. Burns* (1918), 69 Ind. App. 7. As a *de facto* officer, the acts of the questioned incumbent would be valid acts and would bind the city.

I am, therefore, of the opinion that in answer to your questions it must be held that the councilman in question, while not eligible or qualified to take an oath of office after he removed from his councilmanic district and while legally ineligible to serve as such councilman after his removal, was a *de facto* officer and his acts as councilman are binding upon the city, at least until his eligibility is challenged by proper judicial proceedings.

I am further of the opinion that the qualification by this councilman and the surrender of such office by his predecessor terminated the term of the predecessor and that such predecessor does not hold over.

OFFICIAL OPINION NO. 13

February 17, 1948.

State Board of Tax Commissioners,
301 State House,
Indianapolis 4, Indiana.

Gentlemen:

I acknowledge receipt of your letter of January 23rd requesting my opinion as to whether or not automobiles given to disabled servicemen by the Federal government are subject to property tax.

I call your attention to the provisions of Public Law No. 663, 79th Congress, approved August 8, 1946 (Sec. 252, Title 38, U.S.C.A.), a portion of which is as follows:

“Automobiles and other conveyances for disabled veterans: To enable the Administrator of Veterans’ Affairs to provide an automobile or other conveyance, at a cost per vehicle or conveyance of not to exceed \$1,600, including equipment, with such special attach-