its provisions, followed the construction of the Supreme Court in the case of Storen, State Treasurer v. Sexton, Marion County Treasurer, *supra*, and that such funds when so deposited are placed there "pending the time when they can be applied to the ultimate use for which they are designed". As stated by the court in that case, the matter of the deposits of public funds is a matter for legislative discretion and such discretion can not be controlled by the courts.

From the foregoing, I am of the opinion each of your questions must be answered in the negative. If such plans, as outlined in your questions, are considered necessary to remove burdensome, detailed administrative duties from such public officials in large communities, they can only be effectuated by remedial legislation.

OFFICIAL OPINION NO. 55

September 15, 1947.

Miss Anne M. Dugan, R.N.,
Secretary, Indiana State Board
of Examination and Registration of Nurses,
638 K. of P. Building,
Indianapolis, Indiana.

Dear Miss Dugan:

Your letter of August 5, 1947, received, as follows:

> "Sister Miriam Dolores, President of this Board, is being transferred to a hospital in Illinois. The members of this Board would like for you to give us an official opinion stating how long Sister will legally be eligible to continue as a member of this Board.
>
> "Sister Miriam Dolores expects to leave sometime within this week, and we should appreciate an early reply, if possible."

Section 63-901 Burns' 1943 Replacement, same being Section 1, Chapter 182, Acts 1921, creates the Indiana State Board of Examination and Registration of Nurses and provides in part as follows:

> "On July 1, 1921, the governor shall reorganize the 'Indiana state board of examination and registration of nurses,' by appointing five (5) registered nurses from various sections of the state, members of said board."

Thereafter said section of the statute provides for the reappointment or filling of vacancies of members of said Board.

Section 63-902, Burns' 1943 Replacement, same being Section 1, Chapter 96 of the Acts of 1931, among other things, requires the members of the state board to meet annually in the city of Indianapolis in the month of May and elect from their members a president and a secretary, who shall serve as treasurer. It authorizes said board to adopt such by-laws, and change the same from time to time, as may be necessary to govern and control its examinations, actions and business affairs. Special meetings of the board may be called by the secretary upon the written request of any two (2) members. It is required to conduct examinations of applicants for nurses licenses.

An examination of the Constitution of Indiana and of the statutes failed to reveal any requirement as to continued residence in this state of the president of said board. I also fail to find any decision of the Supreme or Appellate Court of Indiana specifically passing upon the question of whether or not a member of a state board vacates his appointment upon permanently removing his residence from the state.

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 in 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 he was 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 Hugunin 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 trustee 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 coextensive 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.' "

While it is true that the Indiana authorities involve cases wherein the change of residence was from one part of the political subdivision involved to another part thereof, as distinguished from a removal to some other political subdivision or to some other state, the reasoning advanced in said cases clearly indicates that it is a matter to be prescribed by the legislature rather than a construction to be made by the court as to the requirement of continued residence by one who qualified as to residence upon appointment.

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, § 1, Constitution, § 104 Burns' 1926, § 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, §§ 2, 3, and Art. 2, § 1, U. S. Constitution; §§ 2, 3, 11 Burns' 1926, §§ 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, § 7, and Art. 5, § 7, Constitution, §§ 110, 140 Burns' 1926, §§ 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, § 4, Constitution, § 161 Burns' 1926, § 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, § 6, Constitution, § 163 Burns' 1926, § 156 Burns' 1914."

Since the foregoing statute regarding the appointment of members of the Board of the Indiana State Board of Examination and Registration of Nurses only requires that they be appointed from "various sections of the state" it is my opinion that they are only required to be residents of the state at the time of appointment and continued residence therein is not essential in order to avoid creating a vacancy in the office, unless the factual situation on the change of residence from the state is such as to amount to an "abandonment" of the office.

It has been consistently held in this state that if an officer voluntarily changes his residence to some other jurisdiction for such a period of time as to seriously impair his ability to carry on the necessary and required duties and functions of his office he will be deemed to have abandoned the same.

Relender v. State (1897), 149 Ind. 283, 288;

State ex rel. Kopinski v. Grzeskowiak, Township Trustee et al (1945), 223 Ind. 189; 59 N. E. (2d) 110.

In the last referred to case, the court on page 112 of the opinion said:

> "(1) The rule in this state is that the appointing authority may appoint an official to fill a vacancy in an office, without waiting for a judicial determination of vacancy, if the facts existing at the time are such that a judicial determination would result in the declaration of vacancy. * * *
>
> "(2) If, when such appointee attempts to take possession of the office, he is resisted by the previous incumbent, he is compelled to bring an action to try the right to such office, in a manner provided by law. * * *"

On this question also see the case of Osborne et al. v. State ex rel. Michaels (1890), 128 Ind. 129, 130.

It would, of course, be impossible to express any opinion on the application of the laws to the facts in this case as to the effect of the non-residence of the president of your Board and her ability to carry out the duties of her office. Such facts are not set out in your letter. Nor do I express any opinion concerning the domicile of Sister Miriam Dolores.

Summarizing the foregoing, I am of the opinion the president of your Board did not vacate her office solely by virtue of the fact that she is being transferred by her religious order to a hospital in the State of Illinois. However, if such transfer prevents or seriously interferes with her ability to carry out the functions and duties of her office as president of your Board, then in my opinion a vacancy in such office would exist and could be filled by the Governor without any judicial determination that such vacancy in fact exists.