Mr. John A. Rothrock, as Chief of the review board of the Indiana Employment Security Division, is not entitled to vacation pay of fourteen days based upon one day of vacation for each month of his service in that position, he having terminated his employment and being entitled only to pay during his actual employment.

OFFICIAL OPINION NO. 34

April 5, 1946.

Senator John W. Van Ness,
Valparaiso,
Indiana.

Dear Senator:

I have your letter of March 29, 1946 in which you ask for an official opinion upon the following question:

"Did the 1945 session of the General Assembly abolish the office of township trustee?"

In your letter you state that this question was raised by someone who contended that Section 455, page 949, of the Indiana Election Code of 1945 (Chapter 208, page 680) repealed Section 5 of Chapter 133 of the Acts of 1859, as amended by Section 3, Chapter 226 of the Acts of 1889 (Burns' 1943 Repl. Sec. 65-102), and also repealed Section 1 of Chapter 37 of the Acts of 1877, thus abolishing the election of township trustees in Indiana.

Article 18 of the Indiana Election Code, same being Section 175, Chapter 208, Acts of 1945, Vol. I, provides as follows:

"Township trustees, township assessors, justices of the peace, constables, three (3) members of the township advisory board, and such other township officers as may be provided for by law, shall be elected at the general election held on the first Tuesday after the first Monday in November, in the even-numbered year preceding the expiration of their term of office, and every four (4) years thereafter, and such election shall be
conducted under the provisions of this act governing general elections. The term of office of all township officers shall be four (4) years and such term shall begin on the first day of January succeeding their election.” (Our emphasis.)

The above quoted section of the 1945 Indiana Election Code leaves no doubt that the Legislature did not abolish the election of township trustees in Indiana, since it specifically provides for their election. Sections 176 and 177 of the 1945 Act provide the manner in which such township trustees are elected.

The above quoted section of the 1945 law providing for the election of township trustees was obviously intended to take the place of former laws providing for such elections. Thus, the 1945 Act did repeal Section 3, Chapter 226 of the Acts of 1889 (Burns' 1943 Repl., Section 65-102), which provided as follows:

“The qualified voters in each township shall, on the first Monday in April, 1890, and every fourth year thereafter, at the usual place or places of holding elections in such township, elect a township trustee, who shall hold his office for four (4) years and until his successor is elected and qualified. Before entering upon the duties of his office said trustee shall take an oath or affirmation before some person authorized to administer the same for the faithful performance of his duties, and execute a bond, conditioned as in ordinary official bonds, with at least two (2) freehold sureties, in a penalty in not less than double the amount of money which may come into his hands at any time during his term, by virtue of his office, to the acceptance of the county auditor, which bond shall remain on file in the office of the county auditor.”

Also, the 1945 Act repealed Section 1 of Chapter 37 of the Acts of 1877, which provided as follows:

“That there shall be held an election in each township of each county in this State on the first Monday of April, 1878, and every second year thereafter, for the
purpose of electing Justices of the Peace, Township Trustee, Assessor, Constable, Supervisors, and such other officers for such township, as may be provided for by law; which elections shall be conducted by the officers of, and governed by the laws regulating general elections, so far as the same are applicable."

As a matter of fact, both of the foregoing statutes: namely, Section 3, Chapter 226 of the Acts of 1889 and Section 1, Chapter 37 of the Acts of 1877, were considered to be superseded by other laws even before the 1945 acts. Section 1 of Chapter 236 of the Acts of 1933, same being Section 29-1901 of Burns' 1943 Repl., provides for the election of township trustees and thus superseded the former laws on the election of township trustees. Moreover, that part of Section 3 of Chapter 226 of the Acts of 1889 which provided for the giving of a bond by township trustees was superseded by Section 1 of Chapter 64 of the Acts of 1915, same being Burns' 1943 Repl., Section 65-103, which section was not repealed by the Indiana Election Code of 1945.

Moreover, that the 1945 Legislature did not intend to abolish the office of township trustee is clearly shown by the fact that at that same session it passed five other laws dealing with the administration of this office. The subject matter of these acts included clerical expenses allowable to township trustees, per diem expenses of such trustees, employment of supervisors by trustees to administer poor relief, transportation of high school pupils by township trustees, and removal of township trustees from the jurisdiction of the Welfare Department. These are contained in Chapters 113, 117, 260 and 311 of the Acts of 1945.

Based upon the foregoing reasons and authorities, it is perfectly clear that the 1945 Legislature did not intend to abolish the office of township trustee.