

(a) A school bus driver is not a public officer or an official of the township or school district by which he is employed and therefore, the constitutional provisions of Section 6 of Article 6 of the Indiana Constitution do not apply. The relationship existing between a township trustee and a school bus driver is that of employer and employee and for this reason there is no constitutional prohibition applicable to such relationship.

(b) Burns' R. S. 1943 Supplement, Section 28-3922, contains the following:

"Any school bus driver shall be employed subject to dismissal at any time for incompetency, negligence, failure to perform his duties, or for any other just cause."

I have been unable to find any language in any other statute which provides that a school-bus driver must be a resident of the township in which his route is located. The language contained in the above quoted statute is not sufficient to provide for a cancellation because a school bus driver is not a resident of the township.

Therefore, it is my opinion that as long as a school bus driver is competent, fully and faithfully performs all the duties required of him under his contract, and is not guilty of any negligence or other conduct specifically mentioned in the statute, or in the contract, it is immaterial where he resides.

STATE BOARD OF TAX COMMISSIONERS: TAXES—Delinquent personal property tax can not be included in sale of real estate for delinquent tax. Section 2, Chapter 224, Acts of 1941.

June 16, 1944.

Opinion No. 59

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of June 13th in which you ask the following question:

“A taxpayer upon the first day of March, 1943, owns real and personal property. Subsequent to the first day of March and during the year 1943, he conveys the real estate but retains the personal property. During the year 1944 he fails to pay his taxes upon the personal property and they become delinquent. Can the amount of this delinquent personal property tax be enforced as against the real estate that was conveyed?”

In answer to this question I call your attention to the case of Heekin Can Co. v. Porter et al. (1943), — Ind. —, 46 N. E. (2d) 486. In the above case the Court, referring to Section 2 of Chapter 224 of the Acts of 1941, said:

“* * * Section 2 of said Act, which has to do with delinquent tax sales of real estate, provides that no real estate shall be sold for any delinquent installment of taxes until fifteen months shall have elapsed after such installment shall have become delinquent. It further provides that *‘hereafter it shall not be necessary for the purposes of such sale for the county treasurer to levy upon personal property or to attempt to collect such real estate taxes out of the personal property of the owner nor shall any personal property tax delinquency be included in the sale of real estate for delinquent taxes.’* (Our italics.)

“In 1935 the legislature apparently adopted a legislative policy of not having any tract or parcel of real estate chargeable with taxes assessed against any other property. Ch. 262, Acts of 1935, p. 1292, provides in reference to the sale of real estate for delinquent taxes: ‘That in no event shall any liability for delinquent taxes on any tract or lot be chargeable to or be a lien against any other tract or lot belonging to the same owner.’ The provisions above quoted from section 2 of the 1941 Act seems to be a further step taken pursuant to this same legislative policy.

“* * *

“* * * If they were a lien on the real estate which he then owned, the lien was created only under the provisions of former statutes. A lien so acquired was only a statutory lien. While the personal obligation

to pay could be enforced against the owner by an action at law, the statutory lien could be enforced only by the method provided by statute—a sale of the real estate pursuant to the statutory provisions. By taking away the right to sell real estate to pay delinquent personal property taxes, the only statutory method provided for enforcing the lien, *we must assume that the legislature intended to remove such liens from the real estate. By saying that 'hereafter' no personal property tax delinquency should be included in the sale of the real estate for delinquent taxes, the legislature clearly intended to remove the lien of such taxes from real estate in all cases where the sale had not then been held. * * *.*" (Our emphasis.)

Therefore it is my opinion that the delinquent personal property tax can not be collected by a tax sale of the real estate.

STATE BOARD OF ACCOUNTS: Tenure teachers must be paid on nine months' basis where last year's contract and new executed contract call for nine months even though trustees thereafter change the school term to eight months.

June 19, 1944.

Opinion No. 60

Hon. Otto K. Jensen, State Examiner,
Department of Inspection and
Supervision of Public Offices,
State House,
Indianapolis 4, Indiana.

Dear Sir:

Your letter of June 6, 1944, received in which you state teachers in certain townships were not dismissed before May 1, 1944, and were therefore automatically rehired at the same salary they received for the 1943-44 school year. On account of their financial condition such school units desire to cut their school terms from nine (9) months to eight (8) months for the school year 1944-45. You desire an official opinion on the following questions: