“Residing means to take up one’s abode; to dwell permanently or for a considerable time; to have a settled abode for a time.” MacCormick vs. Wall, 201 Indiana 349.

“Residence may import temporary sojourn or permanent domicile.” Wallace vs. State, 147 Indiana 621.

It has been held that a child of “non-resident parents’ living as a member of aunt’s family was residing in district. Anderson v. Breithbarth, 62 N. D. 709, 245 N. W. 483.

In 1936 this office was called upon to give an official opinion on the interpretation of residence requirements of the Public Welfare Act of 1936. Acts 1936, Chapter 3, Sec. 71, Page 12, same being Sec. 52-1204 Burns’ Indiana Statutes, under Supplement 1942. This Act provided “assistance shall be given under the provisions of this Act to any dependent child who: (a) has resided in this state for a period of at least one year immediately preceding the date of the application for such assistance, * * *”

Said opinions stated that the interpretations of the above Act regarding residence would be deemed to mean the same as “living” in this state. Opinions of Attorney General, 1936, Page 297, also see Page 293.

It is therefore my opinion that said Josephine Riley is entitled to admission to the Indiana Soldiers’ and Sailors’ Children’s Home.

INDIANA TAX BOARD: Limitation of authority of Board to correct wrongful assessments. Authority to cancel taxes on property acquired by counties.

Counties: Authority of Indiana Tax Board to cancel taxes on property acquired by counties.

January 14, 1943.

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

Dear Mr. Bedwell:

This will acknowledge receipt of your letter of January 13, 1943, requesting my opinion upon the following questions, towit:
"1. Has the Indiana Tax Board any power to re-
view and authorize the correction of any assessment,
except in those cases where the assessment complained
of was made by the Assessor or the Board of Review,
without giving notice of the assessment or increase of
assessment to the taxpayer? If it has such power, what
is the extent and limitations thereon?

"2. What is the authority and power of the State
Tax Board in considering and acting upon wrongful
assessments? Has it any power to consider any alleged
wrongful assessment except where the taxpayer, after
being notified of the assessment, filed a petition for a
rehearing or an appeal on the assessment? If it has
any power to consider wrongful assessments, what is
the extent and limitations upon such power?

"3. Under the provisions of Section 1 of Chapter
224 of the Acts of 1941, page 714, upon petition of the
Auditor and Treasurer of any county, the Indiana Tax
Board has authority to order a cancellation of any and
all taxes assessed against real estate acquired by the
county. Does it have authority to order cancellation
of taxes against property acquired by a municipal cor-
poration, other than the county, for municipal pur-
poses, or acquired by the Federal government for Fed-
eral purposes, in those cases where it appears to the
Board that the collection of such taxes is inequitable
or unjust?"

The authority of the Indiana Tax Board to review and
authorize the correction of any assessment or to cancel taxes
is only such power and authority as has been expressly
granted to and conferred upon the Indiana Tax Board by
statute. Section 64-1407, Burns' Indiana Statutes, Ann. 1933,
being Section 209 of Chapter 59, Acts of 1919, granted to and
conferred upon the State Board of Tax Commissioners, the
predecessor of the present Indiana Tax Board very broad
power and authority, which was contained in the following
language, to-wit:

"And said board of tax commissioners is empow-
ered, at any time prior to the first Monday in Novem-
ber of the year following the assessment, upon a
verified application duly filed with it, to review and authorize the correction of any assessment, if it shall appear that the taxpayer has been wrongfully charged with taxes. The authority given in this section to correct errors shall carry with it the authority to direct the issuance of orders to refund taxes shown to have been wrongfully charged and collected, and authority to direct the cancelation of unpaid taxes erroneously charged. * * * The state board of tax commissioners shall have full authority to inquire into the grounds of complaint of erroneous assessment and collection of tax, under such rules as may be prescribed by it, and if satisfied from competent evidence produced that there is a real grievance it may direct that the same may be remedied either by cancelation of the tax if uncollected together with all penalties charged thereon, or if the tax has been paid, by directing a refund of the amount found to have been wrongfully charged and collected."

This section of the statute was thereafter amended by Section 1 of Chapter 224, Acts of 1941, page 714, which is Section 64-1407, Burns' 1941 Supplement. This amended section now reads as follows:

"And said board of tax commissioners is empowered, at any time prior to the first Monday in November of the year following the assessment, upon a verified application duly filed with it, to review and authorize the correction of any assessment, if such assessment complained of was made by the assessor or the board of review without giving notice of such assessment or increase of assessment to such taxpayer that he might appear and be heard on such assessment: Provided, however, That no assessment shall be considered as wrongful unless the taxpayer after being notified of the assessment filed a petition for a rehearing or an appeal on the assessment. When notified by the assessor of an assessment made and the taxpayer is not satisfied he shall appear before the board of review and if not satisfied with the action of the board of review, he shall within five days after the adjourn-
ment of the board of review file an appeal to the state board of tax commissioners, which board shall then have full authority to review and determine the amount to be assessed against the taxpayer’s property set out in the petition. * * * Upon petition of the auditor and treasurer of any county the state board of tax commissioners shall have full authority to order the cancelation of any and all taxes assessed against real estate acquired by any such county.”

You will observe that there is a very marked difference between the language contained in Section 64-1407, supra, as originally enacted in 1919 and the language as now found and contained in the amendment made by Section 1 of Chapter 224 of the Act of 1941 above quoted, the difference being a restriction and limitation upon the power and authority of the Indiana Tax Board to act in the matter of correcting assessments and cancelation of taxes except upon the conditions stated in the amendment, which in my opinion constitute conditions precedent to any action or authority to act by the Indiana Tax Board.

It is a firmly established rule of statutory construction that where the language and phraseology of a statute is changed by amendment and old matter eliminated, and any new provision is incorporated in the amendment, that the Legislature is presumed to have changed the existing law by the incorporation of the new provisions and the change in the phraseology of the existing statute. See Department of Treasury v. Muessel, 218 Ind. 250, 32 N. E. (2d) 596; State, ex rel. v. Board, etc., 196 Ind. 472, 482, 149 N. E. 69; Chism v. State, 203 Ind. 241, 179 N. E. 718; and Steiert v. Coulter, 54 Ind. App. 643, 648.

Therefore, it must be presumed that the Legislature by the amendment contained in Chapter 224 of the Acts of 1941, intended to restrict and limit the power and authority of the Indiana State Tax Board in all matters involving the correction of assessments or the cancelation of taxes, and it is my opinion that unless the conditions prescribed in Chapter 224 of the Acts of 1941 have been complied with, the Indiana State Tax Board has no power or authority to make any corrections or assessments, or to cancel taxes.
The closing sentence of Section 1 of Chapter 224, Acts of 1941 page 714, reads as follows:

"Upon petition of the auditor and treasurer of any county the state board of tax commissioners shall have full authority to order the cancelation of any and all taxes assessed against real estate acquired by any such county."

It will be observed that the quoted sentence does not include the words "municipal corporation, other than the county, for municipal purposes, or acquired by the Federal government for federal purposes or any real estate owned by any such municipal corporation or federal government or agency."

The language contained in the closing sentence as above set forth does not include any real estate except real estate owned by a county, although there is no sound legal reason why the same rule permitting the cancelation of taxes by the Indiana State Tax Board should not apply to real estate owned by a municipal corporation other than the county or real estate acquired by the federal government for federal purposes in cases where it appears that the collection of such taxes is inequitable or unjust; however, this is a matter for the exclusive determination of the Legislature, and it is my opinion that the Indiana Tax Board has no right, power, or authority to enlarge upon the plain and explicit language of the statute by construction, or by adding thereto words and language which have been omitted by the Legislature.

The remedy for any omissions, defects, inequalities, or injustices in the present law lies with the Legislature by amendment, and cannot be cured or perfected by construction, either by the Indiana Tax Board or by the Attorney General, where the language in the statute is plain, unambiguous, and definite, as in the language in the statute under consideration. In such cases the statute must be literally construed. See Rogers v. Calumet National Bank, 213 Ind. 576, 12 N. E. (2d) 261; Cheney v. State, etc., 165 Ind. 121, 125, 74 N. E. (2d) 892; Pere Marquette v. Baertz, 36 Ind. App. 408, 74 N. E. 51; Taelman v. Board, etc., 212 Ind. 26, 6 N. E. (2d) 557.

I believe that the above fully answers all of your questions, but if for any reason there remains any doubt or you desire further information, kindly advise me.