

certified copy thereof, in a sealed package, with postage prepaid, to the person to be affected * * *.”

This seems to conform with the thirty (30) day period within which to take an appeal after the service of such an order or decision of the board. Apparently, that could not refer to general orders made pursuant to authority provided in Section (12) because, as I understand the provision of subdivision (13), general orders which may be used in fixing and determining minimum prices require only posting in the main office of the board and a copy filed in the office of the Secretary of State.

STATE BOARD OF ACCOUNTS: Whether a member of the Board of Trustees of a Sanitary District holds a lucrative office; whether a mayor of a city or member of a town board may also be a member of the board of trustees of the sanitary district in which their city or town is located.

April 9, 1942.

Mr. Otto K. Jensen,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have your letter wherein you refer to sanitary districts created pursuant to Section 48-4101, et seq., Burns' Ind. St. Ann., 1933 (Acts 1913, Chap. 307, as amended by Acts 1919, Chap. 11 and Acts 1931, Chap. 100.) The statute provides for the appointment by the Judge of the Circuit Court of the county in which the district, or a major portion thereof, is located of five trustees to constitute a board of trustees for the district, which shall manage and control all of the affairs and property of the sanitary district. The trustees shall receive not to exceed \$10 per day for each day's services performed, which aggregate payment shall not exceed \$250 per year.

You have asked whether a person may be a member of the board of trustees of such sanitary district and at the same time be a mayor of a city or member of a town board within such district.

The answer to your inquiry depends upon whether or not this would contravene Article 2, Section 9 of the Indiana Constitution preventing one from holding more than one lucrative office at the same time.

The office of mayor of a city frequently has been held to be a "lucrative office" within the meaning of Article 2, Section 9.

Howard v. Shoemaker (1871), 35 Ind. 111.

Our Supreme Court has said:

"An office is a public charge or employment, in which duties are continuing, and prescribed by law and not by contract, invested with some of the functions pertinent to sovereignty, or having some of the powers and duties which inhere within the legislative, judicial or executive departments of the government, and emolument is a usual, but not a necessary element thereof. Foltz v. Kerlin (1886), 105 Ind. 221, 55 Am. Rep. 197; State ex rel v. Hocker (1897), 39 Fla. 477, 22 South. 721, 63 Am. St. 174; Shelby v. Alcorn (1858), 36 Miss. 273, 72 Am. Dec. 169."

Wells v. State ex rel (1911), 175 Ind. 380, 384.

If, in addition to the foregoing characteristics, emoluments, salary or fees accrue, a "lucrative office" within the meaning of Article 2, Section 9 of the Indiana Constitution would exist.

An examination of the powers, duties and nature of the office of trustee of a sanitary district as created by Section 48-4101 et seq., *supra*, discloses that it possesses the characteristics which make of it a "lucrative office" within the meaning of Article 2, Section 9, *supra*. That it is lucrative is indicated by the provision for compensation; the powers of taxation and of eminent domain which are delegated to the board by statute are incidents of sovereignty; the purpose of its creation is to promote public health, clearly a function of sovereignty, and the definition, scope, extension or curtailment of its powers and duties are clearly matters of legislative control.

The acceptance of an appointment to such board of trustees by one occupying the office of mayor of a city would vacate such office and necessitate the filling of such vacancy. Likewise, the subsequent election to the office of mayor of one who

was a trustee of such sanitary district would vacate the trusteeship and necessitate the filling of such vacancy.

Wells v. State (1911), 175 Ind. 380;
 Bishop v. State ex rel (1898), 149 Ind. 223;
 Kerr v. Jones (1862), 19 Ind. 351.

Members of a town board of trustees hold offices created by statute. It has been held that the constitutional provision above referred to does not include a purely municipal office within the scope of the term "lucrative office" as there used and that therefore a person may hold a purely municipal office and a "lucrative office" as the term is used in Article 2, Section 9, *supra*, at the same time.

State ex rel Platt v. Kirk (1873), 44 Ind. 401.

In the case of State ex rel Platt v. Kirk, *supra*, it was said that the office of city councilman is "purely and wholly municipal in its character" and that an incumbent of the office "has no duties to perform under the general laws of the State."

An examination of the statutes creating the board of trustees of a town and the statutes defining and fixing the powers and duties of such boards is required in order to determine whether a member of a town board holds a "lucrative office" within the meaning of the Constitution, or a purely municipal office.

Provision for the election of town trustees is found in Section 48-115, Burns' etc., Supp. 1941, and the powers of such board are prescribed in Section 48-301, Burns', *supra*. The powers there conferred may be said to be largely local or municipal in character, although it may be observed that by the 6th, 18th and 19th clauses the General Assembly undertook to confer upon or delegate to the town board, for local purposes, certain powers usually associated with sovereignty, possessed by the State and exercised only under specific authorization of the General Assembly. They are: power to prohibit gambling, to levy taxes and to provide schoolhouses. By other statutes the town board is required to elect a board of school trustees (28-1201, Burns', etc. 1933) but no other provision is found giving to the trustees of the civil town control over its schools.

A statute of 1865, which was in effect at the time the case of *State ex rel Platt v. Kirk*, *supra*, arose and was decided, imposed the duty of electing school trustees upon town boards and city councils, *Blakemore v. Dolan* (1875), 50 Ind. 194, 197. Nevertheless, it was held that a member of a city council occupied an office which is "purely and wholly municipal in its character."

By an act first adopted in 1891 and amended in 1909, the board of trustees of each incorporated town constituted the board of health for such town, one of its duties being to appoint a secretary who shall be the town health officer. (Sec. 35-108, *Burns' etc.* 1933). Other statutes, all enacted since 1873, authorized such town board of health to make complaint to the State Board of Health, concerning conditions injurious to health; (Sec. 35-201, *Burns', supra*), to declare certain conditions, if found, to constitute a public nuisance and to order their abatement. (Sec. 35-1802, *Burns', supra*.)

In the performance of duties pertaining to municipal corporations, boards of town trustees have had conferred upon them by the General Assembly by an act of 1905 powers of eminent domain, not only within their corporate boundaries but for ten miles beyond such limits. (Sec. 48-503, *Burns', supra*.)

In view of the powers, duties and authority vested and imposed upon a board of trustees of a town, subsequent to the decision of the Supreme Court in the case of *State ex rel Platt v. Kirk*, *supra*, a member of such board may be said to occupy an office, the duties of which are "prescribed by law and not by contract, invested with some of the functions pertinent to sovereignty" and that he has "duties to perform under the general laws of the State." Authority to compensate such trustees is contained in the statute (Sec. 48-208, *Burns', supra*), and where the board has by ordinance fixed compensation for such trustees, he would hold a lucrative office within the meaning of Article 2, Section 9 of the Indiana Constitution. Such a town trustee could not at the same time, be a trustee of a sanitary district as referred to in your inquiry.