

1975 O. A. G.

OFFICIAL OPINION NO. 36

December 24, 1975

Mr. Wayne A. Stanton
Administrator
Department of Public Welfare
701 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Stanton:

This is in response to your request for an Official Opinion concerning the provision of Indiana Code of 1971, section 12-1-3-2 that, except in counties in which there is a city of the first class, at least one member of a county board of public welfare shall be a township trustee. You ask specifically (1) whether a county welfare board composed of only four members because of a township trustee's refusal to serve may transact business; (2) whether the circuit judge, as the appointing authority, may appoint a non-trustee to the trustee slot on the board; and (3) whether township trustees who serve on county welfare boards may receive a per diem allowance for their services.

ANALYSIS

Indiana Code of 1971, section 12-1-3-2, as last amended by Acts 1974, Public Law 45, Section 1, provides, in part, the following:

“(a) In all counties a five-member county board of public welfare shall be appointed by the judge of the circuit court. Board members must meet the following requirements:

(1) Each member must have been a resident of the county for at least two (2) years prior to his appointment.

(2) Each member must have a recognized interest and knowledge in public welfare problems.

OPINION 36

- (3) No more than three (3) of the members may be of the same political party.
- (4) An elective county official may not serve.
- (5) Except in counties in which there is a city of the first class at least one board member shall be a township trustee."

Your question anticipates those situations where no township trustee will accept appointment to the county board of public welfare.

You ask first what effect the resulting vacancy on the board will have on its ability to transact official business. Subsection (g) of Code section 12-1-3-2 provides, in part, that "[t]hree members of the board constitute a quorum for the transaction of business." Clearly, the fact that the trustee slot on the county welfare board is vacant does not prevent the other four members from transacting official business.

You ask next whether a non-trustee may be appointed to the fifth slot. Plainly, there is no authority for that action. Code section 12-1-3-2(a) (5), *supra*, states: "[A]t least one board member shall be a township trustee." And in granting to the circuit court judge the authority to make appointments to the board, that section also provides that board members "must meet" the designated requirements.

You ask finally whether a township trustee who is serving on the county welfare board may receive a per diem allowance for his services. Code section 12-1-3-2(f) provides the clear answer:

"The members of the board shall serve without salary, but are entitled to receive:

- (1) Whatever mileage and travel expenses are allowed for state employees.

- (2) *In the case of members who are not elective or appointive officials*, a per diem allowance, whenever appropriated, of not more than twenty dollars (\$20.00)

1975 O. A. G.

for attendance at a meeting and not more than sixty dollars (\$60.00) per month to each member." (Emphasis added)

The initial clause of subsection (f) (2) excludes elective and appointive officials from receiving the per diem allowance.

CONCLUSION

It is, therefore, my Official Opinion (1) that, where a township trustee refuses to serve on a county public welfare board as required by Code section 12-1-3-2, the remaining four board members may, nevertheless, transact official board business; (2) that a non-trustee may not be appointed to the township trustee slot on the county welfare board; and (3) that a township trustee may not receive a per diem allowance for his service on a county welfare board.