1970 O. A. G.

OFFICIAL OPINION NO. 2

February 2, 1970

Hon. Harry B. Spanagel
231 Oakey Avenue
Lawrenceburg, Indiana 47025

Dear Representative Spanagel:

This is in response to your letter requesting my Official Opinion in answer to the following question:

"May a county clerk employ a deputy or other assistant who resides outside of the county?"

ANALYSIS

Article 6, Sec. 4, of the Indiana Constitution provides in part:

"No person shall be elected or appointed as a county officer, who shall not be an elector of the county; nor anyone who shall not have been an inhabitant thereof, during one year next preceding his appointment * * *"

Article 6, Sec. 6, of the Indiana Constitution provides in part:

"All county, township, and town officers, shall reside within their respective counties, townships, and towns * * *

County officers are therefore required by the Indiana Constitution to be residents of the county prior to their election or appointment and during the time they hold office. There are no provisions, either constitutional or statutory, concerning the residence of county employees other than officers or deputies.

There can be no question that a county clerk is an officer. Clerks are authorized to appoint deputies by 1 R. S. 1852, Ch. 28, Sec. 1, as amended and found in Burns' Section 49-501. The following section of that Act, as found in Burns' Section 49-502 provides:

"Such deputy shall take the oath required of their principals and may perform all of the official duties of
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such principals, being subject to the same regulations and penalties.”

A deputy clerk thus takes the same oath of office as the clerk and may perform all of the official duties of the clerk, and therefore, he must be considered akin to the holder of an office. A similar conclusion was reached in relation to deputy prosecuting attorneys in 1960 O. A. G. No. 9, p. 42.

Office assistants who do not take any oath of office and who do not possess the authority to perform the official duties of a clerk are employees rather than officers.

CONCLUSION

Thus, a county clerk may employ non-oath-taking personnel who are not residents of the county, but he may not appoint as deputies any persons who have not resided within the county for one year prior to their appointment. Furthermore, any properly appointed deputy who later moves from the county is ineligible to continue as a deputy.