"The term 'residence' has been judicially defined as the abode or dwelling place, as distinguished from a mere temporary locality of existence. Residence, and even domicile, is a quality which endures when once acquired, until changed *animo et facto*.”

It therefore appears that a person who has bodily residence in, and intends to remain in, a county, resides in that county irrespective of the length of time he has had such residence and intention. This conclusion is consistent with the qualifications for electors as set out in Art. 2, Sec. 2, of the Indiana Constitution, which provides:

“In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the state during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, shall be entitled to vote in the township or precinct where he or she may reside.”

The residence provision is that the voter must reside for a given period of time before he is qualified to vote. Obviously, the determination of residence cannot be dependent upon the right to vote.

Therefore, it is my opinion that, absent any statutory specification of a required length of residence as a precedent to the obtaining of a marriage license, an applicant must be considered to have satisfied the requirement as soon as he establishes a bona fide residence in the county.

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**OFFICIAL OPINION NO. 42**

September 24, 1965

Hon. Charles K. Abshier  
State Representative  
3320 Hillcrest Terrace  
Evansville, Indiana 47712

Dear Representative Abshier:

This is in response to your request for my opinion interpreting the effect on Pigeon Township of Vanderburgh 218
County of Ind. Acts of 1965, ch. 132, being Burns IND. STAT. ANN. (1965 Supp.), § 65-221c, which act reads as follows:

“AN ACT to amend an Act entitled ‘An Act concerning township officers, fixing their compensation, providing for clerical assistance, office rent, expense, repealing certain laws and all laws in conflict therewith and declaring an emergency.’

"Be it enacted by the General Assembly of the State of Indiana:

"SECTION 1. Acts 1945, c. 251, is amended by adding a new and additional section thereto to be numbered section 14b and to read as follows: Sec. 14b. The classification of townships for salary and allowances for township trustees of a class two township, fixed and determined by the State Board of Accounts pursuant to the provisions of this act, shall not be lowered below the classification of a salary schedule fixed by the State Board of Accounts in the year of 1958 for the township trustees of class two townships: Provided, That any salary paid to any township trustee of a class two township which is not in excess of that salary provided by the classification for salary and allowances for class two townships made by the State Board of Accounts in 1958 is hereby declared to be valid and legal.

"SEC. 2. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage.”

(Emphasis added.)

As noted in the above quotation, said 1965 Act adds a new and additional section to the Acts of 1945, ch. 251, Burns IND. STAT. ANN., §§ 65-208 to 65-222, inclusive. Because of the ambiguity resulting from the language of the new section, it is necessary to examine the basic act, and also the background of the new section.

It should be first noted that said 1965 Act applies to “a class two township, fixed and determined by the State Board
of Accounts pursuant to the provisions of this act. . . .” Section 14a of the basic act, as added by the Acts of 1947, ch. 333, § 1, Burns IND. STAT. ANN., § 65-221a, provides that the State Board of Accounts shall classify all of the townships of this state on or before the last day of July, or as soon thereafter as possible, every four years, to be computed in the year in which township trustees are elected. For the purpose of determining township classifications and the resulting salaries of township trustees, said section provides the factor system, which takes into account the elements of population, geographical area, net assessed valuation and number of teaching units. Pursuant to the provisions of said basic 1945 Act, townships were last classified as of July 30, 1962, which classifications were used for 1963 budgetary purposes and thereafter. According to the classification as of July 30, 1962, which was in effect on the effective date of the new 1965 section, March 6, 1965, Pigeon Township of Vanderburgh County was a Class 3 township and thus the Acts of 1965, ch. 132 would apparently have no effect upon such township. A history of the problem, however, seems to refute the conclusion that Pigeon Township of Vanderburgh County was not intended to be affected by the 1965 Act.

It should be noted that § 5 of the basic act, Burns IND. STAT. ANN., § 65-212, first specifically classified Class 2 townships to include Pigeon Township in Vanderburgh County.

According to the records of the State Board of Accounts, it appears that Pigeon Township was reclassified as a Class 3 township in July, 1962, because of a decrease in population resulting from an urban renewal project.

Although Pigeon Township was not, as of March 6, 1965, a Class 2 township, it is believed that said 1965 Act was intended to refer to such townships as were determined in the year 1958 to be Class 2 townships, which would include Pigeon Township. As your letter points out, the township trustee in this township, notwithstanding the reduction in population, has a high rate of activity in connection with the assistance afforded to relief recipients. That Pigeon Township was intended to be affected by the 1965 legislation is supported by the fact that in the 1963 Legislature there was
introduced, by two Senators from Vanderburgh County, Senate Bill No. 349, which is substantially indistinguishable from the Acts of 1965, ch. 132. Senate Bill No. 349 of the 1963 General Assembly passed the Senate, was referred to the House Committee on County and Township Business, but was not referred by that Committee to the Members of the House for action. The sponsors of the Acts of 1965, ch. 132, in both the Senate and the House, also represent Vanderburgh County, so that there can be no doubt that, in spite of the ambiguous language contained in the act, it was intended to apply to Pigeon Township of Vanderburgh County. Thus, Pigeon Township must be considered to be a Class 2 township on and after March 6, 1965, the effective date of such act.

Turning next to the effect of the proviso contained at the end of Section 1 of the Acts of 1965, ch. 132, it should be noted that it reads as follows:

". . . Provided, That any salary paid to any township trustee of a class two township which is not in excess of that salary provided by the classification for salary and allowances for class two townships made by the State Board of Accounts in 1958 is hereby declared to be valid and legal." (Emphasis added.)

Attention is directed to the fact that this proviso would clearly have the effect of validating any salary “paid” to any Class 2 township trustee which is not in excess of the salary provided for such Class 2 township trustee. This proviso, by the use of the term “paid,” would, of course, validate payments made prior to the effective date of the act which were not in excess of the allowable salary payable to Class 2 township trustees. However, even though some members of the Legislature may have believed that the proviso would have the effect of authorizing additional payments to the Township Trustee of Pigeon Township of Vanderburgh County to be made subsequent to March 6, 1965, for periods prior to that time, so that such trustee would receive for all of the years since 1945 the salary applicable to a Class 2 township trustee, there is grave doubt that the language can be so construed. Statements of members of the General Assembly, or of members of committees of the General Assembly, con-
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cerning their understanding of an act are not admissible, particularly when there is no official verbatim record kept of committee hearings, which is the case in Indiana. As I have previously expressed in my Official Opinion No. 19, issued June 22, 1965, page 96 herein, it is stated in 2 Sutherland Statutory Construction §5009 (3d ed. 1943), in part, as follows:

"Although statements in the committee report as to the reason for or the nature and effect of the proposed law are freely used by the courts to determine the intent of the legislature, they have been more hesitant in resorting to similar statements made by the committee or other persons at the committee's hearings. In two states discussions before the committee have been resorted to for aid in construing statutes. But in at least one state it is definitely established that evidence of what occurred at a committee hearing is inadmissible as tending to show the legislature's purpose. Statements of members of the committee as to their understanding of the proposed bill or statements of interested parties are not admissible. Perhaps this aversion may be explained by the fact that in most states no official verbatim record is kept of most committee hearings. At least it explains the scarcity of cases in the state courts involving the admissibility of statements made at committee hearings."

According to information received from the State Board of Accounts, the Pigeon Township Trustee, since January 1, 1963, has received only the amount of salary applicable to a Class 3 township, and since such salary is less than that payable to a Class 2 township trustee, it would appear that no payments have been made to the Pigeon Township Trustee in excess of those payments authorized by statute which would need to be validated and legalized. It is true that the acceptance by an officer of less than his statutory salary does not estop him from claiming the full statutory salary. As stated in City of Rushville v. Thomas, 88 Ind. App. 661, 165 N.E. 341 (1929), at 669 of 88 Ind. App.:

"Appellee, having received less than the amount provided for him by statute as salary, may, at any time
until barred by the statute of limitations, recover the remainder thereof. *Board, etc. v. Chapman* (1898), 22 Ind. App. 60, 63, 53 N.E. 187; and this is true whether he knew his rights or not. *Board, etc. v. Benson* (1882), 83 Ind. 469, 472.

"Appellant's contention that appellee is estopped from collecting his claim for salary due him because of laches and long delay in presenting the same, cannot prevail. . . ." (Emphasis added.)

In the instant situation, the above case would seem to be inapplicable because the Pigeon Township Trustee has been paid the full salary provided by the Acts of 1945, ch. 251, *supra*, prior to the amendment thereof by the Acts of 1965, ch. 132, *supra*, effective March 6, 1965.

The decrease in salary sustained by such trustee on account of a decrease in the population in his township, effected by the operation of said Acts of 1945, ch. 251, *supra*, was a valid and legal reduction, for the reason that the Indiana Constitution, art. 4, § 22, clause 14, provides that:

"The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

* * *

"[14.] In relation to fees or salaries; except that the laws may be so made as to grade the compensation of officers *in proportion to the population* and the necessary services required. . . ." (Emphasis added.)

Moreover, the then Pigeon Township Trustee was notified by the State Board of Accounts for budgetary purposes on July 30, 1962 (prior to his re-election in November, 1962), that said township had been reduced in classification to Class 3.

In the case of *State ex rel. Wadsworth v. Wright*, 211 Ind. 41, 5 N.E.2d 504 (1937), at p. 45 of 211 Ind., it is stated:

"It is contended by appellant that the legislature may not decrease the salary of a constitutional officer dur-
ing the term for which he is elected. Section 13 of article 7 of the Constitution of Indiana provides that the compensation of judges of the Supreme and Circuit courts shall not be diminished during their continuance in office. There is no provision in the Constitution which expressly restrains the power of the legislature to diminish the compensation of any other officer. In the case of Gilbert v. Board of Commissioners, etc. (1846), 8 Blackf. 81, 82, the court said: 'When the plaintiff accepted the office of county auditor, he took it subject to whatever regulations the legislature might afterwards make respecting it. The compensation, and the duties to be performed, might be increased or lessened as the public good, in the opinion of the legislature, should require. The Constitution provides that the compensation of certain officers shall not be diminished during their continuance in office. This provision is of itself sufficient to show that the compensation of all other officers is entirely at the will of the legislature.' A county auditor is a constitutional officer. Article 6, § 2, Constitution of Indiana. In Turpen v. Board of Commissioners of Tipton County (1855), 7 Ind. 172, 173, a case involving the compensation of a county recorder, a constitutional officer, the court said: 'But it is clearly competent for the legislature to require more official labor for the same compensation, or reduce the compensation for the same labor.' . . .”

Thus, because the Pigeon Township Trustee appears to have been fully paid for the services performed by him during the years in question in full compliance with the statutes in effect during such periods, there would seem to be no consideration upon which to base additional compensation to such trustee. I am of the opinion that when the proviso states:

“. . . That any salary . . . is hereby declared to be valid and legal,”

such must be construed as having reference to past payments.
In fact, the literal interpretation of the proviso could be considered as a legislative approval of the salary previously paid to the Pigeon Township Trustee and as estopping him from claiming any additional salary, even if it be assumed that Pigeon Township was always a Class 2 township.

Therefore, in conclusion, it is my opinion:

1. That the Acts of 1965, ch. 132, has the effect, as of March 6, 1965, of restoring to a Class 2 classification any township which was classed as a Class 2 township in the year 1958, thereby prohibiting a lowering of the classification of such township; and

2. That the proviso contained within § 1 of the Acts of 1965, ch. 132, has the effect of validating and legalizing any salary which was “paid to any township trustee of a class two township” prior to March 6, 1965, which salary is not in excess of that salary provided for the classification for salary and allowances for Class 2 townships, but does not require or authorize additional payments to be made of the difference in salary between a Class 2 and a Class 3 township for service prior to said date.

3. That because the Acts of 1965, ch. 132, supra, has the effect of restoring Pigeon Township of Vanderburgh County to a Class 2 classification as of March 6, 1965, the incumbent township trustee of that township is entitled to receive, as his salary from and after said date, the salary applicable to a Class 2 township trustee.

OFFICIAL OPINION NO. 43

Mr. Larry R. Mohr, Member
State Board of Tax Commissioners
201 State Office Building
Indianapolis, Indiana

Dear Mr. Mohr:

This is in response to your request for my Opinion concerning certain problems anticipated in connection with the