

OPINION 12

OFFICIAL OPINION NO. 12

April 22, 1963

Mr. Richard L. Worley, Chairman  
State Board of Tax Commissioners  
201 State Office Building  
Indianapolis 4, Indiana

Dear Mr. Worley:

This is in answer to your letter wherein you request an Official Opinion concerning the filling of a vacancy in the office of township assessor.

Your specific question is stated as follows:

“Your official opinion is respectfully requested as to the authority of the county assessor to appoint a township assessor of opposite political faith from that of the predecessor, where a vacancy is created by the death of the township assessor.”

The statutory provisions pertaining to the bond and oath of a township assessor together with the procedure for the filling of a vacancy in the office of township assessor are found in the Acts of 1961, Ch. 319, Sections 1603 and 1604 of the “Property Assessment Act of 1961,” as found in Burns’ (1961 Repl.), Sections 64-1303 and 64-1304 respectively. This act repeals the Acts of 1919, Ch. 59, Sec. 134, as amended and found in Burns’ (1951 Repl.), Section 64-1001.

The above cited sections of the 1961 Act, as found in Burns’ 64-1303 and 64-1304, *supra*, read as follows:

64-1303. “Within ten [10] days after the beginning of his term, the assessor shall give bond to be approved by the county auditor, in the sum of three thousand dollars [\$3,000], payable to the state of Indiana, and conditioned for the faithful and impartial discharge of his duties. The assessor before assuming his duties as such, shall take and subscribe an oath or affirmation, which may be administered by the county auditor. The bond shall be filed and recorded with the county recorder.

“The oath shall be in the following form:

STATE OF INDIANA, }  
COUNTY OF..... } ss:

“I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Indiana; that I will faithfully, impartially, and honestly discharge the duties of my office as Township Assessor, and that I will assess all property assessed by me in the manner provided by law according to my best knowledge and judgment, so help me God.

\_\_\_\_\_  
Township Assessor

“Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
County Auditor.”

64-1304. “If the bond and oath required by the previous section are not given and filed within said ten [10] days, the office of assessor shall be vacant. The county assessor, after being notified of any vacancy by the county auditor, shall at once fill such vacancy by an appointment to be approved by the state board of tax commissioners. Such appointee shall be a resident of the township in which such vacancy occurs, shall possess the qualifications required by law, and shall be of the same political affiliation as the assessor failing to qualify or being removed, as the case may be, and such appointee shall give the bond and take the oath as above required. And, if, from any other cause, a vacancy should occur in said office in any township at any time, the county assessor, with the approval of the state board of tax commissioners, shall fill such vacancy by appointment, and the person so appointed shall qualify as herein required.”

Your question necessitates the use of rules of statutory construction. In the case of *Snider v. State ex rel. Leap* (1933), 206 Ind. 474, 477, 190 N. E. 178, the Supreme Court stated:

## OPINION 12

“It is a rule of statutory construction that: ‘courts must give effect, when ascertained, to the legislative intent. In seeking such intent, effect must be given, if possible to every word and clause of the act \* \* \* Words and phrases must be given their plain, ordinary, and usual meaning, unless a contrary purpose is clearly manifested.’ ”

An examination of Burns' 64-1304, *supra*, indicates that the Legislature made provision for two distinct classes of contingencies the happening of which may result in the occurring of a vacancy in the office of township assessor. These classifications are: (1) where the vacancy occurs because of “*the assessor failing to qualify or being removed*” and (2) where the vacancy occurs “*from any other cause.*” (Our emphasis)

Let us first direct our attention to a comparison between the 1919 Act, Ch. 59, *supra*, and the 1961 Act, Ch. 319, Sec. 1604, *supra*. It should be noted that the 1919 Act covered this subject in a single section, whereas the 1961 Act broke this subject matter into separate sections. However, the basic language with regard to the appointment of a replacement to fill a vacancy in the office of township assessor remains the same with the exception of a few words and the improvement of punctuation for the sake of clarity. The clear and unequivocal import of the language employed in both the 1919 and 1961 Acts, is that if the elected township assessor does not file his bond and oath of office, within ten days after the beginning of his term, the office of assessor shall be vacant. The 1919 Act then provided that the county assessor, after being notified of “such” vacancy, *by the county auditor*, shall at once make an appointment to fill the vacancy. The 1961 Act provides that the county assessor, after being notified of “any” vacancy, *by the county auditor*, shall fill the vacancy.

Our initial question, is, then, whether the 1961 General Assembly intended a change in meaning in the statute by the substitution of the word “any” for the word “such.” An examination of the entire clause in the 1919 Act and of the entire sentence in the 1961 Act, indicates that there was no change of meaning created by the substitution of the word “any” for the word “such.” In the 1919 Act the word “such”

obviously referred to a *vacancy occurring by reason of the failure to file a bond and oath of office*. The word "any" in the 1961 Act obviously refers to "any" vacancy of which the county assessor is notified by the county auditor. An examination of the prior clauses in the 1919 Act and Section 1603 of the 1961 Act, as found in Burns' 64-1303, *supra*, indicates that the bond is required to be filed with the county recorder and the form of the oath to be taken by the assessor shows it is to be sworn to before the county auditor. It thus becomes quite apparent that the *county auditor could only be giving official notice, to the county assessor, of a vacancy by reason of the failure to file a bond or take the oath of office, within ten days after the beginning of the term*.

We must next consider the question as to whether the requirement that the new appointee "*shall be of the same political affiliation as the assessor failing to qualify or being removed*" (Our emphasis) refers to all appointments or whether it refers only to appointments occurring by reason of failure to post bond and execute the oath of office as required. It would appear that the first three sentences of Burns' 64-1304, *supra*, apply solely to the situation of the failure to file bond and execute the oath of office. The language indicates this when it states "and shall be of the same political affiliation as the assessor *failing to qualify or being removed*." The use of the italicized language indicates, that as to political affiliation, the Legislature was referring solely to failing to qualify or being removed from office for not filing the required bond and oath. It, of course, is obvious that an elected assessor might either just fail to show up and never file the bond or oath, thus creating an automatic vacancy or he might purport to take the office and enter into his duties but have to be removed by reason of his failure to file his bond and oath within the prescribed ten days.

If Section 1604, Burns' 64-1304, *supra*, ended at the close of the third sentence therein, there might be some plausible argument that every vacancy occurring in the office of township assessor would have to be filled as required in those three sentences. However, it is emphasized that there is a fourth sentence, in this section, which specifically provides for the filling of a vacancy "*from any other cause*." (Our emphasis)

## OPINION 12

We must first determine what the words "*from any other cause*" mean. Inasmuch as the foregoing three sentences of Burns' 64-1304, *supra*, have been specifically concerned with a vacancy occurring by reason of the failure to post bond or execute the required oath, it then becomes apparent that the words "from any other cause" mean any other cause exclusive of failure to post bond and execute the oath of office. It will be noted that said last sentence of Burns' 64-1304, *supra*, covering "from any other cause" specifically excludes any reference to political affiliation and states that "the person so appointed shall qualify as herein required."

An examination of the sentence structure of the third sentence of Burns' 64-1304, *supra*, discloses that the appointee is required to be a resident of the township in which the vacancy occurs, shall possess the qualifications required by law *and* shall be of the same political affiliation as the assessor failing to qualify or being removed. It is thus quite clear, by the precise language used in the section, that the Legislature did not intend the political affiliation to be one of the qualifications mentioned in the fourth sentence of said section but that such affiliation was only a requirement *in addition* to proper qualification in the specific incident of the failure to post bond or execute the oath of office, as required by the first three sentences of said section.

In your letter, dated March 22, 1963, accompanying your letter of the same date requesting this Opinion, you indicate that your board has construed the provisions of Burns' 64-1304, *supra*, relative to "being removed" from office to mean "either by resignation, death or action of the State Board of Tax Commissioners pursuant to Section 1507 (Burns' [1961 Repl.], Section 64-1237) of said act \* \* \*" In the instant case the vacancy was caused by death. To include "by death" in the scope of the words "being removed," as the same are employed in Burns' 64-1304, *supra*, makes appropriate the use of the maxim *expressio unius est exclusio alterius* as an aid in seeking the legislative intent. In the case of *Shupe v. Bell et al.* (1956), 127 Ind. App. 292, 298, 141 N. E. (2d) 351, it is said:

"\* \* \* One of the oldest maxims of the law is, 'The express mention of one person or thing is the ex-

clusion of another.' Wharton's Legal Maxims, p. 11. Otherwise stated, 'What is expressed makes what is silent to cease.' Coke Litt., 210a; *Woodford et al. v. Hamilton et al.* (1894), 139 Ind. 481, 39 N. E. 47. 'When the law is in the affirmative that a thing should be done by certain persons or in a certain manner, this affirmative manner contains a negative that it shall not be done by other persons or in another manner.' 26 Am. and Eng. Ency. Law, (2nd ed.) 605, and cases cited therein; *State ex rel. v. Home Brewing Co.* (1914), 182 Ind. 75, 95, 105 N. E. 909."

See also: 1962 O. A. G., pages 380, 383, No. 69.

You have cited the use of the words "any vacancy" as being applicable to a situation where, as in the instant case, the vacancy occurs by reason of death. It appears to me that had the Legislature intended the requirement of party affiliation to be followed in situations other than "failing to qualify or being removed," it would merely have added the words "from any other cause" so that the requirement of the third sentence of Burns' 64-1304, *supra*, would be included in the following words: failing to qualify, being removed, or from any other cause. The Legislature could then have deleted and eliminated, as repetitious, the last six lines of said section. To adopt your suggestion as to the uses and scope of the words "any vacancy" would make the fourth concluding sentence of said section meaningless and surplusage. In 1947 O. A. G., pages 42, 46, No. 11, it is stated:

"\* \* \* It is a familiar rule of statutory construction that each provision and word of a statute must be given effect if possible, and it will not be presumed that the legislature intended to put into a statute words which are meaningless (*Garvin, Rec. v. Chadwick Realty Corp.* (1937), 212 Ind. 499)."

An almost identical question was presented to me under date of January 14, 1958, by Mr. Joda G. Newsom, Chairman of the State Board of Tax Commissioners, wherein it was stated:

"I am enclosing herewith, a letter from the County Attorney of Miami County, relative to the appointment

## OPINION 12

of a Township Assessor to succeed an Assessor who has resigned.

“The question involved here, is whether that part of Section 64-1001, Burns’ Indiana Statute, which requires that an appointee be of the same political affiliation as his predecessor, should control.

“I will appreciate it if you will give consideration to this matter and give us an unofficial opinion in regard to the merits of the County Attorney’s contention.”

In response to Chairman Newsom’s letter, the requested Unofficial Opinion was prepared by a member of my staff and submitted to Mr. Newsom on January 17, 1958. Although the 1958 Unofficial Opinion was rendered at the time the prior statute, shown in Burns’ 64-1001, *supra*, was in existence, nevertheless the reasoning and the conclusion expressed therein are consistent with my Opinion as herein presented. The conclusion, in the Unofficial Opinion, being as follows:

“Therefore, when a vacancy occurs, such as you mentioned in your letter, the county assessor should fill such vacancy by appointment subject to the approval of the State Board of Tax Commissioners. The restriction as to being of the ‘same political affiliation’ does not apply in such a case. All that would remain to be done would be to qualify by giving bond and taking the oath as required by Section 64-1001, *supra*.”

The problem presented as the basis for the 1958 Unofficial Opinion was resolved by the county assessor appointing a township assessor of a different political affiliation from that of the township assessor who resigned and such appointment was duly approved by the State Board of Tax Commissioners.

In summary, therefore, it is apparent that the 1961 General Assembly clearly intended that in the event of a vacancy occurring by reason of failing to post bond or take the oath of office, it is required by statute that the county assessor having been notified of such vacancy by the county authority should make an appointment, which appointment is to be approved by the State Board of Tax Commissioners. Such appointee,

in addition to the statutory qualifications for the office, also shall be of the same political affiliation as the assessor failing to qualify or being removed. Furthermore, *if a vacancy should occur from any other cause*, the county assessor is to make the appointment, with the approval of the State Board of Tax Commissioners and the person so appointed shall meet the statutory qualifications for the office, which do not include the requirement of any particular party affiliation.

Therefore, for the reasons hereinabove stated, it is my opinion that where a vacancy is created by the death of a township assessor, the county assessor is not required to appoint, as a township assessor, an individual of the same political faith as the assessor whose death caused the vacancy. Thus, the county assessor may appoint an individual of opposite political faith to that of the deceased township assessor.

---

OFFICIAL OPINION NO. 13

April 25, 1963

Hon. Bernard J. Krampe  
State Senator  
Ferdinand, Indiana

Dear Senator Krampe:

Your letter of April 19, 1963, has been received requesting an Official Opinion on the following questions:

- "1. Can the civil cities of Cannelton and Tell City annex territory from the M. S. D. of Troy Township?
- "2. Can the school cities of Cannelton and Tell City annex territory from the M. S. D. of Troy Township?
- "3. If a civil city annexes territory, does the school city automatically extend its jurisdiction over the annexed territory?"

In the case of *Fort Wayne Community Schools v. State ex rel. New Haven Public Schools et al.* (1959), 240 Ind. 57, 159 N. E. (2d) 708, the civil city of Fort Wayne had annexed